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ROYAL COMMISSION OF INQUIRY INTO CERTAIN
DEATHS AT THE HOSPITAL FOR SICK CHILDREN AND
RELATED MATTERS.

*Freedom: In the
(cont'd)*

Hearing held
8th floor
180 Dundas Street West
Toronto, Ontario

The Honourable Mr. Justice S.G.M. Grange	Commissioner
P.S.A. Lamek, Q.C.	Counsel
E.A. Cronk	Associate Counsel
Thomas Millar	Administrator

Transcript of evidence
for
September 7, 1983

VOLUME 29

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Hearing held on the 8th Floor,
180 Dundas Street West, Toronto,
Ontario, on Wednesday, the 7th
day of September, 1983.

- - - - -

THE HONOURABLE MR. JUSTICE S.G.M. GRANGE - Commissioner
THOMAS MILLAR - Administrator
MURRAY R. ELLIOT - Registrar

- - - - -

APPEARANCES:

P.S.A. LAMEK, Q.C.)	Commission Counsel
E. CRONK)	
D. HUNT	Counsel for the Attorney- General and Solicitor General of Ontario (Crown Attorneys and Coroner's Office)
I.G. SCOTT, Q.C.)	Counsel for The Hospital
I.J. ROLAND)	for Sick Children
R. BATTY)	
M. THOMSON)	
B. PERCIVAL, Q.C.)	Counsel for The Metropolitan
D. YOUNG)	Toronto Police
W.N. ORTVED)	Counsel for numerous Doctors
K. CHOWN)	at The Hospital for Sick Children
B. SYMES	Counsel for the Registered Nurses' Association of Ontario and 35 Registered Nurses at The Hospital for Sick Children



APPEARANCES: (Continued)

H. SOLOMON	Counsel for the Ontario Association for Registered Nursing Assistants
D. BROWN	Counsel for Susan Nelles - Nurse
E. FORSTER	Counsel for Phyllis Trayner - Nurse
N. GOODMAN	Counsel for Mrs. M. Christie - R.N.A.
J.A. OLAH	Counsel for Janet Brownless - R.N.A.
S. LABOW	Counsel for Mr. & Mrs. Gosselin, Mr. & Mrs. Gionas, Mr. & Mrs. Inwood, Mr. & Mrs. Turner, Mr. & Mrs. Lutes and Mr. & Mrs. Murphy (parents of deceased children)
W.W. TOBIAS	Counsel for Mr. & Mrs. Hines, (parents of deceased child Jordan Hines)



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LIST OF MEMBERS

NAME

RESIDENCE

DATE OF ADMISSION

MEMBERS

NAME

RESIDENCE

DATE OF ADMISSION

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A/DM/ak

1
2 ---Upon commencing at 10:00 a.m.

3 THE COMMISSIONER: Yes, Miss Cronk.

4 DR. ROBERT MARK FREEDOM, Resumed


5 DIRECT EXAMINATION BY MS. CRONK: (Continued)

6 Q. Dr. Freedom, you recall when
7 we broke yesterday afternoon we were discussing the
8 mortality and morbidity meetings that had been
9 scheduled and which took place in September of 1980
10 at the Hospital. I believe you told us that you were
11 in attendance at both of the meetings, the first on
12 September the 5th and the second on September the
13 26th. In respect of the meeting of September the 5th,
14 Doctor, you will recall that the deaths of the
15 Bilodeau child, the Turner child and the Taylor child
16 were discussed at that meeting.

17 Can you help us, Dr. Freedom, do you
18 have any recollection as to whether the issue of
19 digoxin intoxication as a potential contributing
20 cause of death in those cases, or as possible explanation
21 for deaths in those cases was raised at that
22 meeting?

23 A. I don't have any recollection,
24 Miss Cronk, that digoxin was mentioned for any of
25 those three children that we reviewed.

Q. Dr. Freedom, one of the



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1
2 exhibits that has been admitted before the Commission
3 is a copy of several pages of handwritten notes which
4 we understand to have been made by Nurse Radojewski
5 at the meeting of September 5th, and that is Exhibit
6 46, Mr. Commissioner.

7 I can refer you, Dr. Freedom, to page
8 11 of those notes, if you flip through you will see
9 that one of the pages is numbered at the top right
10 hand side, No. 11.

11 A. Yes.

12 Q. And under the name "David
13 Taylor" there appears, half way down an entry ECG ST
14 down, depression? dig.tox.

15 A. Yes.

16 Q. I can tell you, Dr. Freedom,
17 that Dr. Rowe during the course of his evidence
18 testified that it was his belief that that reference
19 in Nurse Radojewski's notes pertain to the condition
20 of the child on his admission to the Hospital. Does
21 this note help you or assist you in any way in
22 recalling any discussion at the meeting of September
23 the 5th concerning digoxin intoxication?

24 A. No. I didn't know that
25 Miss Radojewski was taking notes, and I certainly
again don't remember any comment about dig. toxicity.



1
2 I do recall, I think we talked about it yesterday,
3 that when I first saw David Taylor in my office on
4 Friday afternoon, he was not on cardiac medications
5 and his electrocardiogram showed rather a severe
6 ST wave depression, which again I think as we
7 discussed yesterday together is what I would expect
8 of some babies with critically severe aortic stenosis.

9 Q. I'm sorry, Dr. Freedom, prior
10 to today had you seen or had an opportunity to review
11 these notes by Miss Radojewski?

12 A. I had read them, I had read
13 about them in Dr. Rowe's testimony, or perhaps he
14 had mentioned to me did I recall anyone taking notes.
15 I said, no, and he mentioned this had come out in his
16 examination.

17 Q. I take it the discussion took
18 place after the commencement of these proceedings?

19 A. Yes.

20 Q. And during the course of
21 Dr. Rowe's evidence.

22 A. Yes, I had no idea that anyone
23 was taking notes.

24 Q. Dr. Freedom, can you help me,
25 the ST wave depression as you have described to have
been reflected in the ECG of David Taylor when you



1
2 examined him on admission, is that consistent in your
3 view with what has been described as digoxin effect
4 which on occasion manifest itself in any ECG reading?

5 A. Yes. I think one could see
6 some of the same ST-Twave segment changes in a youngster
7 on digoxin. Again though I think with reference to
8 David Taylor, these changes were on his cardiogram
9 when I saw him in my office on Friday. I think if I
10 remember I found my page 2 of the letter that was not
11 in the Hospital chart, where I described those changes
12 on his cardiogram on admission.

13 Q. You are referring now to the
14 reporting letter that we discussed yesterday?

15 A. Correct.

16 Q. I take it then, Dr. Freedom,
17 to make sure I understand your evidence, that in your
18 experience it would not be uncommon to consider an
19 ST-Twave depression as being consistent with digoxin
20 effect?

21 A. Let me just change the focus
22 a little bit of that. If a child was not on digoxin
23 at that time, and I saw these changes, I would be
24 concerned about the state of the heart muscle, the
25 myocardium. If a child was on digoxin at the time of
the cardiogram, then I would ask myself is it the



1
2 digoxin, or is it some underlying process of muscle,
3 or both.

4 Q. Digoxin toxicity is at least
5 one of the matters that would come to mind if you
6 saw those depressions on the reading?

7 A. Not necessarily, Miss Cronk,
8 in the sense you can see wave segment changes
9 as digoxin effect, not necessarily toxicity.

10 Q. I understand, Doctor. Doctor,
11 moving then to the next morbidity and mortality
12 meeting that was held on September the 26th, 1980.
13 Once again you will recall that you told us you were
14 present at that meeting and there were series of
15 children whose deaths were discussed: Dion Shrum,
16 Antonio Velasquez and the Monteith child. Once again,
17 Doctor, do you have any recollection of any discussion
18 having taken place at that meeting concerning the
19 possible contribution of digoxin intoxication to the
20 death of those children?

21 A. No, I do not.

22 Q. Can you help me, Doctor, was
23 the death of Brian Gage discussed at that meeting on
24 September the 26th?

25 A. I don't recall.

Q. Fairly, Doctor, I should tell



1
2 you that the minutes of the meeting of September the
3 26th do not recall there was a discussion with
4 respect to Brian Gage, but we know he died the day
5 before on the cardiology wards. My question to you
6 in terms of your attendance at that meeting was
7 whether you raised the death of Brian Gage, or were
8 concerned at that point that his death too should be
9 reviewed at that conference?

10 A. No, I did not.

11 Q. The minutes that have been
12 marked as an exhibit before the Commission,
13 Dr. Freedom, with respect to that meeting, indicate
14 at the conclusion that a further mortality meeting
15 was to be scheduled. We have heard evidence that
16 that further meeting was not in fact held until
17 January the 12th, 1981. In the intervening period
18 between the 27th of September and January the 11th,
19 did you personally attend, or were you invited to
20 attend any further conference at which it was intended
21 to discuss the deaths of children on Wards 4A/B?

22 A. I believe, Miss Cronk, we had
23 one cardiovascular pathology conference in October
24 in the routine Monday afternoon session, but it was
25 not of the format, you know, that the September
meetings that we have discussed.



1
2 Q. That cardiovascular meeting
3 was the normal one that is scheduled in accordance
4 with what you outlined yesterday?

5 A. Yes, correct, but I don't
6 remember any other conference being held after that
7 late September conference until the one back in 1981.

8 Q. We have heard evidence as
9 well, Dr. Freedom, that Dr. Rowe was absent from
10 the City and the Hospital for some period during the
11 fall, and that he was somewhat surprised on his
12 return to discover that a further meeting, or a
further conference, had not been held.

13 Can you help us, Dr. Freedom, do you
14 recall any discussion amongst the staff cardiologists,
15 or more particularly with Dr. Jedeikin after
16 September the 26th with respect to the necessity or
17 desirability of holding a further meeting that fall?

18 A. No, I don't recollect any
19 discussion that I had with Dr. Jedeikin, or any of
20 our regular work conferences that we were going to
have another one.

21 Q. Did you in your own mind,
22 Dr. Freedom, having been at the September the 26th
23 meeting, consider it advisable, or did it occur to
24 you that another meeting should be held that fall?
25



1
2
3 A. Well, again I know in retro-
4 spect, I can't place my own comments at that time.
5 I know when Dr. Rowe got back he had mentioned to
6 the staff that he wanted to have another one. Again
7 I think that coloured all of our impressions at that
8 time.

9 Q. Doctor, you will recall
10 yesterday we spoke of the child Paul Murphy who died
11 on the cardiology wards in August of 1980. You
12 indicated at that time that you hadn't had an
13 opportunity recently to review the record. Have you
14 now had a chance to do so?

15 A. Yes, I did that last evening.

16 Q. Doctor, as I understand it
17 you were the staff cardiologist on call the night of
18 Paul Murphy's death, is that correct?

19 A. Yes.

20 MS. CRONK: Mr. Commissioner, I don't
21 believe there will be any necessity to refer, unless
22 Dr. Freedom wishes to, to anything other than Volume
23 3 of the record, you will recall it is a three volume
24 medical record, Exhibit 82.

25 Q. Doctor, as well, as I under-
stand it you examined the child on the day of his last
admission to the Hospital, that was August the 19th,



1
2 is that correct?

3 A. Correct.

4 Q. And you made a consultation
5 note of that examination?

6 A. Correct.

7 Q. Can we turn to page 132 of
8 Volume 3 of the record, Doctor. Can you help me,
9 is that the consultation note that you made having
10 examined the child on the late afternoon of his
admission?

11 A. Yes.

12 Q. And if I understand your
13 description of the child's condition at the time,
14 or at least your impression of his condition, and I
15 am reading now from the notes for August the 19th,
16 you were of the view that the child had ---

17 MR. ORTVED: What page please,
Miss Cronk?

18 MS. CRONK: I'm sorry, page 132,
19 Mr. Ortved, Volume 3.

20 MR. ORTVED: Thank you.

21 MS. CRONK: Q. You were of the
22 view that the child had tetralogy of Fallot with
23 pulmonary atresia, continuing with right ventricle
24 failure, chronic right heart failure, edema, he was
25



1
2 cyanosed and clubbed at the time.

3 I take it, Doctor, that note at the
4 bottom left hand side of the consultation note
5 reflects your intended plan for the child at that
6 stage?

7 A. Yes, where I describe the
8 use of vigorous diuretics, neuro consults and home
9 ASA, as soon as possible.

10 Q. I take that to mean, Doctor,
11 that it was your hope and intention that the child
12 would be returning home and his hospitalization would
13 not be prolonged at that stage?

14 A. Correct. I think we felt that
15 there was no further surgery that we could offer
16 this unfortunate lad. The family had spent consider-
17 able time in the Hospital over the summer and we felt
18 that the more time he spent at home the better for
19 the family and for Paul.

20 Q. Paul Murphy was a child, if I
21 recall it correctly, Doctor, that had spent the
22 better part of his life in and out of hospitals as
23 a result of his cardiac problems, is that correct?

24 A. Correct.

25 Q. I see a note as well under
August 22nd, 1980, at 3:30 p.m. in your consultation



1

2

note, Doctor, and if I am reading that correctly ---

3

THE COMMISSIONER: What page please?

4

MS. CRONK: I'm sorry, it is the

5

same page, Mr. Commissioner, and the bottom right

6

hand side.

7

THE COMMISSIONER: Oh, yes, thank

8

you.

9

MS. CRONK: Q. If I am reading the

10

note correctly, Doctor, it reads:

11

"Patient well known to Hospital for

12

Sick Children and me. Chronic

congestive heart failure. No further..."

13

Am I reading it right?

14

A. "...no further surgery."

15

Q. "No further surgery available",

and then the notation "no 25".

16

A. Correct.

17

Q. Do I take that correctly to

18

mean, Dr. Freedom, that no resuscitation order was

19

in place for this child?

20

A. Yes, as of that date.

21

Q. Doctor, are you familiar with

22

the terminal events experienced by this child on the
evening of his death?

23

A. Yes, I am.

24

25



1
2
3 Q. I take it you followed his
4 progress after having seen him on August the 19th
5 when he was admitted to the ward?

6 A. Correct.

7 Q. On the basis of your familiarity
8 with his condition, having seen the child both prior
9 to August the 19th and prior hospitalizations, and
10 again on the date of his last admission, and on the
11 22nd of August, were you able, Doctor, after his
12 death on August 23rd during the early hours of the
13 morning to formulate an opinion as to the probable
14 cause of his death?

15 A. Well, I felt that this lad,
16 as I described in my consultation note, had in-stage
17 irreversible cardiac disease. He had severe impair-
18 ment of the function of his pumping chamber. He was
19 terribly oedematous, and in the chart on page 205,
20 even the month before, or two months before, he had
21 nearly died in Hospital. He had become unresponsive,
22 and I felt although I hoped he would be home with
23 his family for a few days, I felt that his death
24 was explained by his severe unrelieved congenital
25 heart malformations and intractable heart failure.
I also, again Miss Cronk, as I reviewed the
chart last night, I see there was a digoxin level of



1
2 1.8 taken four days prior to his death.

3 Q. It is my understanding,
4 Doctor, that that is the only digoxin level that
5 was taken during the period of the last hospitaliza-
6 tion of Paul Murphy prior to his death, is that
7 your understanding as well?

8 A. Yes. He came in on August
9 the 19th, he died August the 23rd, so he was in the
10 Hospital of four days and had a level on admission.

11 Q. Of 1.8?

12 A. Correct.

13 Q. Doctor, in your view, were
14 any of the terminal events, or terminal symptoms
15 suffered by this child indicative of digoxin intoxica-
16 tion?

17 A. No.

18 Q. Were any of the events indeed
19 consistent in your view with digoxin intoxication?

20 A. Well, this lad died, and I
21 guess in view of the evidence that we have all heard
22 that anyone's death is consistent with digoxin. I
23 certainly did not consider it at the time, and seeing
24 the terribly ill state that Paul was in I never would
25 have considered it at the time, especially with a
normal level prior to death, having the same type of



1
2 kidney function for those several days prior to his
3 death the BUNs between 25 and 26.

4 Q. His BUNs were considerably
5 elevated prior to death?

6 A. Correct but --

7 Q. I am sorry, Doctor.

8 A. But despite being considerably
9 elevated in the mid-twenties he still had a level
10 that was within what I considered a normal therapeutic
11 range.

12 Q. Of BUN?

13 A. No digoxin, for an elevated
14 BUN.

15 Q. Doctor, may we explore the
16 terminal events a little bit further?

17 A. Yes.

18 Q. My understanding of the entries
19 at the time of arrest in the progress notes indicate
20 that the physician, the attending physician, was
21 called to see Paul because of the lack of responsive-
22 ness. When he was examined he had no detectable
23 blood pressure, his pulses, heart rate and respira-
24 tions were similarly undetectable. The nursing note
25 for the same evening indicates --

A. I'm sorry, Miss Cronk, what



1
2 page are you on?

3 Q. I'm sorry, Doctor, on page 130
4 and 131 of the record.

5 A. Okay.

6 Q. Do you have it, Doctor?

7 A. Okay.

8 Q. The nursing notes will
9 indicate that the patient had been sitting up in
10 bed, was very confused. He had an involuntary bowel
11 movement. He rolled down and turned to the side and
12 then became unresponsive. Respirations at that time
13 were very shallow and laboured. The blood pressure
14 was hard to obtain. Oxygen was given 40 per cent
by mask.

15 Did you not see in the recording of
16 the terminal events of this child, Dr. Freedom, any
17 evidence of arrhythmias, or irregular heart rate,
of heart block, do you agree?

18 A. Again, I can't tell from this,
19 Miss Cronk, I can't remember it either. Since there
20 was no 25 I am not sure Paul was on a monitor at
21 the time. If he was not on the monitor, then again
22 you may have other information I don't have. If he
23 wasn't on a monitor then it is hard to say exactly
24 what the EKG changes were, you know, towards the last
25



1
2 few seconds, or few minutes of his life.

3 Q. Doctor, as I understand it,
4 you were contacted by the attending physician at
5 the time of this child's arrest and death?

6 A. Yes, I was called by my
7 fellow.

8 Q. Based on the events that were
9 described to you leading up to his death, and the
10 symptoms of the final arrest itself, was there in
11 your view, Doctor, at the time of his death, any
12 reasonable probability that his death had been
13 associated with or contributed to by digoxin
intoxication?

14 A. No, I don't think that was
15 a consideration at all.

16 Q. Has any information that was
17 subsequently provided - well, I should ask you first,
18 Doctor, it is my understanding that no autopsy
was performed with respect to this child?

19 A. That is correct.

20 Q. Has any information come to
21 light since the date of his death which in your view
22 suggests, or leads to the indication of digoxin
23 intoxication as having played a part in this child's
24 death?
25



1

2

A. No.

3

Q. Doctor, may we move then to

4

the case of John ---

5

THE COMMISSIONER: Before you move

6

to the next one, there is one thing, Doctor, you

7

said that any death - and perhaps I misunderstood

8

you, could be attributed to digoxin. Are there no

9

deaths, no forms of death that you could positively
rule out digoxin poisoning?

10

THE WITNESS: I guess if you were

11

guillotined .

12

THE COMMISSIONER: You say a

13

person can die of digoxin poisoning without any of

14

the usual symptoms of arrhythmia, sudden onset and

15

all the rest of these things?

16

17

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B
BB/wb

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3 THE WITNESS: I think what I was trying
4 to make, Mr. Commissioner, was the analogy that in the
5 old days syphilis used to mimic every disease known to
6 man. Now, as we are exploring the events over the
7 months of July to March, where, when one dies -- where
8 one dies either with bradycardia, one dies with a
9 systole, with absent heart beat, or with ventricular
10 dysrhythmias, that could be mimicked by a natural
11 process or by digoxin. So, maybe I am misunderstanding
12 you.

13 THE COMMISSIONER: Well, you may well be
14 not understanding me but I am not quite understanding
15 this problem, yet. Assuming, and it is a big, large
16 assumption, assuming that the child was administered
17 a large dose, a massive overdose of digoxin.

18 THE WITNESS: Yes.

19 THE COMMISSIONER: Would you, under
20 those circumstances, expect him to die in the way he
21 did?

22 THE WITNESS: I think that a patient
23 with the type of end-stage heart disease that Paul did,
24 if he had been administered a lethal dose of digoxin,
25 advertent or inadvertent, then his death could be
consistent with that mode of dying; you know, alive
one minute and very quickly rolls over, vomits and
dies. I'm not



1
2
B2 sure I am understanding exactly.

3 MS. CRONK: Q. Well, Doctor ---
4 I'm sorry, Mr. Commissioner.

5 THE COMMISSIONER: No, no. I don't
6 know that anybody who has practiced law all his life
7 could ever complain about an inexact science, but it
8 does strike me as odd that you couldn't rule out
9 digoxin poisoning in any of these children at all.

10 THE WITNESS: Well, I think, you know,
11 Mr. Commissioner, as I have read, you know, the
12 proceedings of the hearing, we know that the children,
13 as you have heard from Professor Rowe, will die
14 sometimes with fast heart rates or ventricular
15 tachycardia, sometimes with slow heart rates, with
16 bradycardia. We know that digoxin poisoning,
17 advertent or inadvertent, can cause bradycardia in
18 some children or ventricular dysrhythmia.

19 So, if one just takes the basic premise
20 of how one dies, I think ---

21 THE COMMISSIONER: Well, from the
22 ordinary layman's point of view, when someone is
23 poisoned, we expect a sudden reaction. That is what
24 always seems to have happened to people who have been
25 poisoned either by bad fish or bad pork or anything
like that. There is a sudden painful reaction and I



B3

1
2
3 would have thought, and I may be wrong, one would not,
4 ordinarily, from poison, die peacefully. That is what
5 appears to be, if ever there were an instance of a
6 peaceful death, this seems to be it, this one with the
Murphy child.

7 THE WITNESS: Well, again, you know, I
8 would agree with that statement. It never crossed my
9 mind in the assessment of Paul Murphy during life, the
way he died.

10 THE COMMISSIONER: I'm really asking
11 you more now, to help us now, rather than what
12 happened then, what you considered then. I am
13 certainly not the slightest bit surprised that it
14 never entered your head because I really don't think
15 digoxin played a part now, and depending on what other
16 evidence we have, I don't think, even now, digoxin
played a part in his death.

17 THE WITNESS: Well, I think, in trying
18 to respond to Ms. Cronk, I think I agree basically
19 with that statement. I think that within the realm of
20 medical possibility, could digoxin have entered here,
21 I never considered it and I would still say that in
22 view of the events that we are reviewing, I think it
23 is unlikely but I think I would have to consider any
24 one of these children, as she has asked or as Mr.
25



B3 1
2 Lamek asked Dr. Rowe ---

3 THE COMMISSIONER: Well, isn't there
4 a question of degree, though, in these children? There
5 are some children where they have a sudden onset. When
6 the death is unexpected there is a sudden onset
7 where one might be more suspicious of some form of
8 poisoning, whereas, in the Murphy child, death is
9 expected, was not to be resuscitated and he died
10 peacefully. Would that not be less likely?

11 THE WITNESS: Definitely.

12 THE COMMISSIONER: Yes, all right,
13 thank you.

14 MS. CRONK: Q. Dr. Freedom, just on
15 that point. In your review of the medical record of
16 this child and based on your knowledge, both of his
17 course throughout the hospital, your knowledge of the
18 terminal events, your discussion with the attending
19 physician when you were called and informed of his
20 death, was there, in your view then or now, any
21 evidence noted by the attending physicians or the
22 nurses, of which you were aware, to suggest that any
23 of the symptoms, which in the medical community are
24 commonly recognized as being symptomatic of digoxin
25 toxicity, were any of those symptoms exhibited in the
death of this child?



B4

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A. No.

4

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10

A. Yes.

11

12

Q. All right. With infants,
vomiting?

13

A. Correct.

14

15

Q. Again, with infants, in some
cases ventricular fibrillation?

16

A. Correct.

17

18

Q. All right. And in some
instances, complete heart block or partial heart
block?

19

A. Correct.

20

Q. EKG changes?

21

A. Correct.

22

23

24

25

Q. All right. Is there anything
else that, in your view, would be a commonly accepted
symptom, based on your experience and knowledge,



B5

1
2 Doctor, of digoxin intoxication?

3 A. In young babies, sometimes
4 increasing lethargy and the older individual, the
5 young adults, a rare child or rare adult will complain
6 of yellow vision and, very uncommonly, psychosis.

7 Q. All right. And we know that this
8 child, obviously, was not an infant, that he had spent
9 most of his life in and out of hospitals, as you have
10 said.

11 A. Right.

12 Q. But of the symptoms that you
13 have agreed are generally considered to be symptomatic
14 of digoxin intoxication and of the ones that you have
15 just described, other than the lack of responsiveness
16 that is noted on the medical chart, did this child,
17 in the course of dying and at the time of death,
18 exhibit any of the symptoms which are commonly
19 regarded as being attributable to digoxin toxicity?

20 A. No.

21 Q. Thank you, Doctor.

22 May we move then to the case of
23 John Onofre, Doctor, who, as I understand it, was
24 admitted to the hospital on November 22nd, 1980, the
25 day following his death -- I'm sorry, the day
following his birth. Mr. Lamek just indicated that I



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said he was admitted the day following his death.
That would be a miracle indeed.

Dr. Freedom, to review that, born on
November 21st, 1980, admitted to the hospital on
November 22nd, 1980, where he subsequently died on
December 9th. Is that your understanding?

A. Correct.

Q. And also, Dr. Freedom, as I
understand your evidence yesterday, you were involved
in the care and management of this child?

A. Only during the initial part of
the hospitalization, Ms. Cronk, when he was on the
newborn service.

Q. All right. And in that regard,
as I understand it, you examined the child on the
evening of his last admission to the hospital and
again the next morning, November 23rd. To help you,
Doctor, I would refer you to what I take to be your
consultation note of those examinations, found at
page 65 and 68 of the record.

A. On page 65, I have my consult-
ation note on admission.

Q. That's right, Doctor.

A. November 22nd.

Q. Right. And if you continue?



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A. Yes.

Q. Continue over to page 68, is that not a further consultation note, indicating that you again examined the child on the morning of November 23rd?

A. Yes.

Q. Thank you.

A. I misunderstood you. Just on admission, I thought you made a reference to just prior to his death?

Q. No, I'm sorry. On the day of his admission, on the morning, the next morning?

A. Yes.

Q. And subsequently, Doctor, as I understand it, you conducted a cardiac catheter procedure on this child?

A. Yes.

Q. All right. And if we turn to page 12 of the record, do we find there your reporting letter to the referring physician, concerning the outcome of the catheter procedure?

A. Yes.

Q. Okay. And if I could direct your attention to page 2 of the reporting letter, Doctor, and specifically the third paragraph, you



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confirm that the cardiac catheter study was performed on the morning of November 23rd and you indicate that the outcome of the procedure confirmed the presence of tetralogy of Fallot with pulmonary atresia with discontinuity between the right ventricle and the pulmonary arteries?

A. Yes.

Q. And that, continuing down to the end of that paragraph, you then further report that:

"At the conclusion of this study, the infant was begun on intra-arterial perfusion of an E-type prostaglandin, in order to maintain ductal patency.

At the time of this dictation, the infant is scheduled for a systemic to pulmonary artery shunt."

A. Correct.

Q. And if we move down to the Addendum at the bottom of your letter, you report that: John Onofre did, in fact, undergo successful shunt surgery on the morning of the 24th of November, correct, Doctor?

A. Yes.

Q. All right. Now, following the shunt operation on this child, Doctor, did you have



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2 any direct involvement in his care and managment on
3 the ward?

4 A. No, I didn't.

5 Q. All right. To the best of your
6 knowledge, Doctor, or do you know whether or not,
7 digoxin therapy for this child was continued during
8 his period in the ICU at the hospital and then again
9 subsequently on the ward when he was readmitted or
10 transferred to the ward from the ICU?

11 A. Yes, I believe it was.

12 Q. Doctor, are you familiar with
13 the terminal events sustained by this child?

14 A. Yes.

15 Q. Were you present for the gross
16 autopsy that was conducted after his death?

17 A. I believe, Ms. Cronk, that I did
18 see his heart sometime later, after the autopsy.

19 Q. Not at the time of the gross
20 autopsy itself?

21 A. I can't remember specifically.

22 Q. But you do specifically recall
23 having seen and observed his heart?

24 A. Right.

25 Q. On the basis of your knowledge
of his anatomical condition as disclosed by the



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2 catheter study, on the basis of your examination at
3 the time of his admission and your knowledge of his
4 subsequent terminal events on the ward and then your
5 observations by observing the heart following the post
6 mortem of this child, were you able to formulate an
7 opinion as to the probable cause of death?

8 A. Well, I think it is important
9 to go back a little bit in this baby's history. When
10 I first saw this little baby at 5:45 p.m. on November
11 22nd, I wasn't even convinced he had structural heart
12 disease because he had ventricular dysrhythmias. As
13 a matter of fact, it was a very strange electrocardio-
14 gram that referred him to me, or, excuse me, that
15 prompted his referral, not so much structural heart
16 disease appeared, it was only as we did more and more
17 investigations did we find that he had, in addition
18 to a very abnormal ventricular rythmn in his cardio-
19 gram, that he had underlying structural heart disease.

20 Q. That's what you discovered,
21 Doctor, as a result, in part, of the catheter
22 procedure that was carried out?

23 A. Well, no, he had the electro-
24 cardigraphic abnormalities, Ms. Cronk, on admission.

25 Q. Yes.

A. During the admission work-up,



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before the catheter study, we did a cross-sectional echocardiogram and that suggested the severe heart malformation that was subsequently confirmed at the catheter investigation.

Q. Yes.

A. So, I felt we had a baby with two problems, two congenital problems; one was the severe heart disease, as you have outlined, and, two, that he had, for some reason, a most unstable, initially ventricular dysrhythmia. I even wrote, and this is on page 66.

Q. You are referring now to part of your consultation note?

A. Right.

Q. On November 22nd?

A. Correct, that I considered that the ventricular dysrhythmias could be transient, could be associated with tumours and the like. So, I was concerned about how this baby presented. The next day we do the catheter study and we find in addition the severe heart disease. That sort of litany was throughout this youngster's chart.

He did undergo successful surgery in the sense that the surgeon was able to construct a shunt and the baby survived. Our newborn results,



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2 at that time, suggested a mortality for a newborn
3 shunt in the range to 25 per cent. So, I was
4 initially pleased that this baby survived.

5 Q. Yes, Doctor, but the rest of
6 his course, you know, was not as comfortable. He had
7 wound infection, on December 2nd we noted continued
8 ventricular irregularity on his cardiogram, by December
9 7th, we considered that he had necrotizing enterocolitis,
10 an inflammation of his intestine with bloody stools and
11 at that time, and I think again in a baby that is ill,
12 who has undergone surgery, any infection or
13 inflammation of the intestines can be extremely
14 serious.

15 A day later, there was discharge from
16 his wound and throughout that whole time, we were
17 concerned, at least in the last several days, we were
18 concerned about his oxygenation.

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2 At the time of his cardiac arrest on
3 the 9th he had an extremely low oxygen level of PO₂
4 of 15. They found virus in his stool and so I felt
5 that this was a debilitated baby with structural
6 heart disease, with a ventricular dysrhythmia which
7 is quite uncommon in my experience in a baby, in a
8 newborn with heart disease, who died as a result
9 probably of inadequate shunt and ongoing systemic
infection.

10 Q. That was your opinion, Doctor,
11 having observed the heart and having been informed
12 as to the terminal events experienced by the child?

13 A. Correct.

14 Q. Doctor, if we turn to page 61 of
15 the record, progress notes for December 8th and
16 December 12th --

17 A. Yes.

18 Q. -- nursing note for December 8
19 as it appears there is rather brief, but it indicates
20 that the incision, I take it the incision from
surgery was causing the child difficulty?

21 A. Yes.

22 Q. It was gaping and there was a
23 white discharge. And a further description of the
24 reddened area around the edge of the incision itself.
That is the description on December 8th?

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A. Yes.

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Q. On December 9th, again the note

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at the bottom of the page, I take it by the attending

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Dr. Lichtin, that he was called immediately at 3:20

6

a.m. The babe was noted to be bradycardic. When he

7

arrived the heart rate was 40 to 100, variable, the

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baby was crying. IV was infusing well. The pulses

were palpable.

9

He called the medical resident. The

10

arrest occurred at 3:29. The arrest team arrived.

11

Junctional rhythm was noted. Patient was intubated;

12

received various medications together with cardiac

13

pulmonary resuscitation resulting in the necessity

for defibrillation.

14

The patient did not respond and

15

resuscitation efforts were stopped at 4:10.

16

He then continues in the middle of the

17

page, on page 62:

18

"Etiology not obvious. Didn't appear

19

septic. Was on ampicillin and ..."

20

I take it to be gentamycin?

21

A. Yes.

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Q. "... for necessity ..."

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A. No, that is question necrotizing

enterocolitis.

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Q. "No other medications. Not

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dehydrated clinically."



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A. Yes.

Q. And then he reports on the arterial blood gases at 3:50 a.m. and indicates that Dr. Fowler was called and the parents were called following the arrest?

A. Yes.

Q. As I read those terminal events, Doctor, and the description of the manner and the onset of those events there are several symptoms which would be commonly taken to be consistent with or indicative of digoxin intoxication. Would you agree?

A. Yes.

Q. Right. And we are talking about the bradycardia?

A. Yes.

Q. Talking about the variable heart rate?

A. Yes, but again as you will recall from my consultation note he had a variable heart rate before he was on any medication as well.

Q. And talking as well about the specific indication that junctional rhythm was noted?

A. Yes.

Q. And the child was defibrilated and didn't appear to be septic nor dehydrated yet



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arrested and could not be resuscitated?

A. Right.

Q. In your view, Doctor, based on those terminal events and the experience and exposure you had to this child prior to death, are any of those symptoms indicative of digoxin intoxication?

A. I think as you have already said they were certainly consistent with digoxin intoxication.

This youngster a week before death had a normal digoxin level of 1.1. His kidney function was unchanged. As one looks at the BUN throughout the chart, and so I think - I certainly did not consider digoxin intoxication at that time.

Q. Looking at the terminal events now in the light of the knowledge that you now have sitting here today, in your own view were those terminal events and the onset of those events and the manner of the child's death indicative of digoxin intoxication?

A. I wouldn't use the word, Miss Cronk, "indicative".

I think this baby was a very ill baby, and I think the events could be now interpreted consistent with a digoxin mode of death, but again I think based on the data that we had at the time that



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was not in consideration.

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Q. Doctor, you told us at the time of the child's death you did not consider digoxin intoxication?

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A. Yes.

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Q. As being a contributing factor I take it nor a potential explanation for his death?

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A. That is right.

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Q. Do you recall any discussion following his death amongst other staff cardiologists whether at the cardiology conference held on the morning following his death or in the days thereafter which centered around the issue of digoxin intoxication as possibly contributory - as a possible contribution to the cause of death?

15

A. No, I do not.

16

17

Q. Doctor, could you turn with me to page 96 of the record if you would, please?

18

A. Sorry? 96?

19

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Q. Page 96. That page of the record, Doctor, is the fourth page of a document described as a cardiac operation sheet.

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Can you help me first, Doctor, I had understood that these forms of documents were completed once a patient had undergone surgery, had been released from surgery and was in a postoperative



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condition on a ward in the hospital. They were ultimately completed by the surgeons involved in the surgical procedure?

A. Right.

Q. Is that your understanding?

A. Yes.

Q. At page 96 of that operation sheet, Doctor, I draw your attention to the remarks section at the bottom of the page. As I read the notation it reads:

"Died suddenly about 3:00 a.m. on ward. Some question earlier in day about necrotizing enterocolitis but felt likely had a ..."

I am sorry, is it mild?

A. Mild viral diarrhea.

Q. "... mild viral diarrhea.

Ectopic beats which were present ..."?

A. Which were present pre-op continued post-op.

Q. "Feel that he likely had a sudden arrhythmia".

A. Yes.

Q. And if we look at the top of the page under the section marked complications, Doctor, where it says "cardiac - arrhythmia" there is a



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question mark beside the cause of death?

A. Correct. I see that.

Q. Doctor, can you tell me first do you agree that the death of this child was sudden?

A. I think the baby's deterioration was, over that week, was fairly profound and ongoing, but he did die on that evening. I am not sure it was sudden or not.

He was an ill baby. There were concerns about him. Again since I didn't participate in his active care those last few days I don't have that perspective. But certainly as I read the chart I find that they were very concerned about this baby.

Q. Well recognizing, Doctor, that following the catheter study you didn't actively participate in the care of this child --

A. Right.

Q. -- nevertheless you told me you were familiar with the terminal events, you were familiar with the manner of his death?

A. Just from reading the chart.

Q. All right. On the basis of your review of the chart and given your prior knowledge as to the anatomical condition of the child and the observations that you personally made when you observed him on admission, are you in a position to offer an



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opinion as to whether or not the death, the arrest was
in fact sudden?

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A. Certainly he was alive one minute
and had a problem which was noted in the chart, and I
would agree that is sudden.

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Q. Doctor, from the balance of the
surgical note contained on the operation sheet, as I
read it there is some question in the mind of the
author as to whether or not arrhythmias could in fact
be said to have caused this death.

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11

A. Yes.

12

Q. Do you share that view?

13

A. No, I think it was more complex
than that, Miss Cronk.

14

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I think we knew this youngster had
severe arrhythmia from the first time we saw him at
Sick Children's Hospital. We were concerned about
intercurrent infection and an already ill baby. So I
would have placed ongoing cardiac dysrhythmia in the
context of a sick infant who had wound infection,
bloody diarrhea and possibly necrotizing enterocolitis.

20

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Q. Well, Doctor, I am not sure that
I understand that fully. In your mind were arrhythmias
appropriately to be described as the cause of death of
this child or was that something that you felt was not
the cause of death?

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A. I felt it would have to be integrated into the factors I have just mentioned; that one can die of arrhythmias with a normal heart structurally and overwhelming infection, and I think the concern of the ward physicians was that this baby had infection; had placed him on antibiotics, ampicillin and gentamycin, so again I would have to say that he had arrhythmia or dysrhythmia at the time of his death but I would integrate in.

Q. Doctor, would you agree with me that arrhythmias in certain situations are of and in themselves symptomatic of digoxin intoxication?

A. Yes, I would.

Q. Right. And that that is a possibility in this case?

A. Yes.

Q. Doctor, did you subsequently receive a copy of the final autopsy report that was prepared on this child?

A. I believe I did.

Q. Would you turn with me, sir, briefly to page 33 of the record? Do you have it, sir?

A. Yes.

Q. I am referring to the final paragraph in the final autopsy report, Doctor, in which



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it is recorded:

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"Death in this case was somewhat sudden and unexpected being manifested by sudden onset of bradycardia and cardiac arrest. In view of the subsequent cases on this ward of digoxin overdose, this must now be raised as a possibility but there is no confirmation of this since at the time of the gross autopsy it was not considered."

12

Stopping there for a moment, Doctor --

13

A. Yes.

14

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Q. -- I take it from your prior evidence that insofar as you are aware that accurately records the situation at the time of the autopsy that digoxin intoxication was not considered as having played a part in this child's death?

18

A. That is correct.

19

Q. And continuing:

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"Because of this possibility, in retrospect, the Coroner's Office (Dr. Tepperman) has been notified (June 30th, 1981)."

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Doctor, did you participate in the decision to notify the Coroner of this child's death?



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A. No, I did not.

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Q. Were you aware - I am sorry?

4

A. As a matter of fact I think it

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was either you or Mr. Lamek that pointed that out to me so I was quite surprised to see that.

6

Q. All right.

7

So prior to the commencement of these

8

proceedings and the hearings of this Commission you

9

were not aware that it had been reported?

10

A. Correct.

11

Q. Do you have any understanding or

12

any information, Doctor, as to why it was reported at

13

the end of June, 1981?

14

A. No.

15

Q. Do you know who did so?

16

A. No.

17

Q. Thank you, Doctor.

18

Doctor, finally I should ask you was

19

there anything that was disclosed in the final autopsy

20

report that was in addition to or supplemental to the

21

information that was available to you at gross autopsy

22

that influenced you to change your opinion as to the likely cause of death of this child?

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A. I wouldn't use the word "change".

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This youngster was found at autopsy to

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have a virulent bacteria in his bloodstream E. coli,



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which I think would support the concern of the ongoing infection, and in addition the histology of the heart muscle showed contraction band necrosis which is an indication of heart muscle injury. And I would wonder whether that would be a contributing factor from the first time we saw this youngster to his ventricular dysrhythmias.

Q. In your view, Doctor, was this child's death at the time at which occurred unexpected as is suggested by the author, the signatory of the final autopsy report?

A. No.

Q. You were not surprised that he died when he did?

A. No, I think again reading the chart fully and seeing the ongoing concerns about infection, bloody stools, this baby was very ill, and I am saddened for the baby and the family, but I think his demise was consistent with the multisystem problems that this baby had.

Q. Thank you, Doctor.

Doctor, the next child who died on the ward to which I direct your attention was Real Gosselin.

A. Yes.

Q. You told us yesterday, as I



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recall your evidence, you had no direct involvement
in the care and management of this patient during
life?

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A. Correct.

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Q. As I understand it, however,
Doctor, you did report on the death as the referring
physician to the doctor who had referred the child to
the Hospital for Sick Children?

9

A. Correct.

10

11

Q. And I refer you to Exhibit 72,
Doctor, and page 35 of the record.

12

A. Yes.

13

Q. Do you have that, Doctor?

14

A. Correct.

15

Q. Is this your reporting letter to
Dr. Miller?

16

A. Yes.

17

Q. Concerning the death of the child?

18

A. Yes.

19

20

Q. Doctor, to be clear as I under-
stand it the child was admitted on December 17th, 1980
and died at approximately 3:20 a.m. on December 18th.

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A. Correct.

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Q. Does that accord with your under-
standing?

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A. Yes.

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Q. And if we look to the first paragraph of your reporting letter.

A. Yes.

Q. You indicate in that paragraph first the fact of the child's death on the morning of December 18th, and second that the death occurred several hours prior to scheduled time for operative therapy of severe thoracic coarctation:

"The baby had seemed relatively comfortable, was receiving prostaglandin, and suddenly became apneic and bradycardic and despite vigorous resuscitative efforts could not be resuscitated."

Can you tell me, Doctor, at the time of preparing this reporting letter, given that you did not have any direct involvement in the care and management of the patient, had you had an opportunity to review the child's medical record in the form as it then stood?

A. No, I had not.

Q. Upon what then, Doctor, did you rely in preparing this reporting letter?

A. Two things. I had spoken to the resident on call and had been informed that this youngster was stable and had had what seemed to be



1
2 a good response to prostaglandin.

3 The next thing - so that was sort of
4 my preliminary - that was in the first paragraph of
5 the letter.

6 Then after the autopsy I did have a
7 chance later that day to go and see the heart, and
8 that was the second paragraph of the letter.

9 Q. Right. You are referring now to
10 the remarks in the second paragraph setting out your
11 observations at gross autopsy?

12 A. Right.

13 Q. And then if we continue in the
14 paragraph on page 2, the first paragraph, your summary
15 section, you indicate:

16 "This infant had a severe thoracic
17 coarctation of the aorta ..."

18 A. Yes.

19 Q. "... and I am really disturbed
20 by this baby's demise just a few
21 hours prior to surgery."

22 A. Right.

23 Q. Stopping there for a moment,
24 Dr. Freedom, I take it from your earlier remarks in
25 the letter that the child was in fact scheduled for
surgery. Was it that day, Doctor?

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A. On the 18th, I believe.

Q. That is later in the day
on which he actually died?

A. Correct.

Q. Can you tell me, Doctor,
why at the time of hearing of this child's death you
were, as you have indicated, really disturbed?

A. Firstly, I feel uncomfortable
that I wrote this letter, because certainly my col-
leagues called my attention to this youngster's
chart after the events of March 1981. When I had
the opportunity to review the chart in depth, I was
very concerned that my first paragraph of the letter,
and certainly my last paragraph of the letter, were
not accurate. I was taking that letter in the context
of December 18th, having been told, or at least
appreciated the fact that "he was stable and having
a good response to prostaglandin." I would have
thought he should have survived the surgery. I
think it is unfortunate that the chart speaks for
itself much better than this letter.

As of March of 1981, or after that
weekend when I started going through with all of
our group the charts of all the children that had



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2 died during that period, it was very clear to me
3 that Real Gosselin did not have a good response to
4 prostaglandin; still had an extreme blood pressure
5 difference between arms and legs; required lasix;
6 was retaining carbon dioxide.

7 THE COMMISSIONER: Would you just
8 go a little bit slower on this, Doctor.
9 He did not have a good response to prostaglandin,
10 what is prostaglandin?

11 THE WITNESS: Prostaglandin is a medica-
12 tion that was actually devised and discovered at the
13 Hospital for Sick Children by Dr. Peter Olley and his
14 collaborators. The purpose of prostaglandin is to
15 dilate the ductus arteriosus. Now, in children or
16 in babies with severe narrowing of the aorta, such
17 as a coarctation of the aorta, or the worst form of
18 narrowing which is virtual discontinuity between the
19 ascending portion of the aorta and the descending
20 portion of the aorta flow to the lower portion and
21 the aorta is maintained through this fetal channel,
22 the so-called ductus arteriosus. The ductus
23 normally constricts within a few days, or a week
24 of birth and the use of prostaglandin has been shown
25 to help dilate the ductus to help flow to the lower



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2 portion of the body and to maintain a reasonable
3 blood pressure.

4 THE COMMISSIONER: You indicated that
5 he did not have a good response to it, and what else
6 did you say that you had discovered?

7 THE WITNESS: Again, I had been in-
8 formed, Mr. Commissioner, at least I understood that
9 he had not had -- excuse me, that he had had a good
10 response to prostaglandin. However, on review of the
11 record it was either my impression or my understand-
12 ing there was an error.

13 THE COMMISSIONER: Did you say in the
14 letter that he had a good response to prostaglandin?

15 THE WITNESS: I said on line three:

16 "The baby had seemed relatively
17 comfortable, was receiving prostaglan-
18 din..."

19 THE COMMISSIONER: Yes.

20 THE WITNESS: And again I wrote that---

21 THE COMMISSIONER: I take it we are to
22 infer from that--at least the recipient was to infer
23 that he had had a good response?

24 THE WITNESS: Correct, and that is
25 what I understood.

THE COMMISSIONER: All right.



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2 THE WITNESS: Again, as I said, Mr.
3 Commissioner, after the events of March of 1981 when
4 I had the charts in front of me and reviewed the
5 charts, I was concerned by the tone of this letter,
6 because as I said, the hospital record spoke for
7 itself.

8 THE COMMISSIONER: What else were you
9 going to refer us to? You said he had not had a good
10 response to prostaglandin.

11 THE WITNESS: He had not had a good
12 response. The notes of the blood pressure showed a
13 persistent rather substantial pressure difference
14 between arms and legs.

15 THE COMMISSIONER: And what is the
16 effect of that?

17 THE WITNESS: That means the heart has
18 to work harder to try and pump blood against this
19 severe narrowing.

20 For instance, I believe it was on
21 December the 17th at 1330 they describe the right arm
22 blood pressure at 166 over P, meaning pulse, and
23 in the leg 60 over P. 2000 hours, 124 over P.

24 THE COMMISSIONER: I am sorry. You are
25 reading from a certain page?

THE WITNESS: I apologize, Mr.



1
2 Commissioner, I am reading from my notes which I ex-
3 tracted from the hospital record.

4 O. To assist you, Doctor, perhaps
5 you could turn to the progress notes at Page 43 of
6 the record, the nursing note begins on the 17th at
7 7 a.m. and continues through the 17th until the time of
8 death.

9 A. Yes.

10 O. To assist the Commissioner,
11 could you indicate for us what features recorded in
12 the progress notes you considered significant when you
13 did review the medical record of this child, and which
14 influenced you to feel that your original understanding
15 of the child's condition had been inaccurate?

16 A. Yes. If you just take that,
17 I believe it is line four where it says:

18 "T 37⁴. Heartrate 126.

19 Respiratory rate 66. Blood pressure
20 146/P..."

21 meaning pulse.

22 "Left leg 70/P."

23 There is a very profound pressure difference between
24 the right arm and the leg of 76 millimeters of
25 mercury. Now, that type of blood pressure difference



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would be hard enough on an older individual, much less
a very sick baby. So, as I read this now in retro-
spect ---

THE COMMISSIONER: What is the effect
of it?

THE WITNESS: The heart has to work
harder.

THE COMMISSIONER: To ---?

THE WITNESS: To pump blood across this
narrowing, that the heart will dilate in response to
this workload and it has been shown ---

THE COMMISSIONER: What is the appropriate
blood pressure of both arm and leg?

THE WITNESS: In babies the leg pres-
sure should be even slightly higher than the arm pres-
sure.

THE COMMISSIONER: And if it isn't
higher, if it is lower and in this instance the blood
pressure is lower, what does that mean?

THE WITNESS: That suggests that there
is a narrowing, or an obstruction in the aorta so that
the pressure that is delivered by the heart can't be
transmitted below the narrowing.

THE COMMISSIONER: All right.



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THE WITNESS: The effect of this is to cause the heart to dilate; for the lungs and liver to be congested; and it has been shown as well, at least in experimental models, that if you create a narrowing in the aorta you get abnormal blood flow from the coronaries to the heart muscle. So again, Mr. Commissioner, as I read the notes of this chart, as I said, the charts in the hospital record spoke for itself and my letter was in error.

MR. ORTVED: Just on that topic, Mr. Commissioner, just so the record will be clear, I think Dr. Rowe made reference on Page 57 in his analysis, of the absence and effect of the prostaglandin.

THE WITNESS: Yes, and that was, Mr. Commissioner, when I had started to read my numbers wrong.

Q. Well, with gratitude to Mr. Ortved, I take it, Doctor - that well, perhaps you can tell us what features are recorded in the progress notes that led you to the view that the child had in fact not responded adequately to prostaglandin therapy that had been prescribed?

A. Several features, Miss Cronk. One, I think most striking was the profound and persistent difference in blood pressure between upper and



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2
3 lower limbs. Number two, and again I wish I had re-
4 corded the page number from the chart, they describe
5 his liver at five centimeters, suggesting that this
6 was very significant ongoing congestive heart failure.
7 On page, and I can't read the page number, Mr.
8 Commissioner ---
9 O. What is the one before, Dr.
10 Freedom?
11 A. Maybe it is 44, Page 45.
12 O. And you are referring to the
13 note on what you think is Page 45?
14 A. I believe where it is 17.12.80
15 in the middle of the page.
16 O. Yes.
17 A. "2220".
18 O. That is on Page 45, Dr. Freedom.
19 A. It says: "PCO 2-46,"
20 and again that the baby, that is breathing 45 to 50 a
21 minute. Receiving oxygen; a PCO 2 of 46 as well as
22 concern, suggesting that the baby is tiring out,
23 so to speak. Most of us, if we breathe fast
24 will blow off carbon dioxide. So, a CO2 would be in the
25 range of 30-32. A level of 30 to 40 is normal and
this baby was at 46.
O. Dr. Freedom, is that a doctor's



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2
3 note, to the best of your knowledge, at 2220 on the
4 17th?

5 A. I can't read the handwriting,
6 but it is most unusual in my experience to see a nurse
7 put into the progress notes blood gas analysis data.

8 Q. Would you infer from the indica-
9 tion of the information recorded in the note that it is
10 likely it was made by a doctor?

11 A. Yes.

12 Q. And I note as well the final
13 entry after the recording of the blood pressure levels
14 and the oxygen levels, that as you have indicated, the
15 child is indicated to be:

16 "Stable for the present but requires
17 relatively urgent operative interven-
18 tion."

19 Am I reading that note correctly?

20 A. I would think so.

21 Q. Would you agree with me,
22 Doctor, that notwithstanding, at least in light of
23 the vital signs information and the oxygen recordings
24 recorded above the doctor, at the time of making
25 this note, appeared to feel that the child was
relatively stable, although he needed close watching?

A. Yes, I would think so.



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Q. Doctor, was there anything else in the progress notes that led you to the view that the child's condition was more severe than you had been led to believe?

6

7

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A. Well, I would think, Ms. Cronk, this baby was very ill, requiring lasix, had a huge liver, five to six centimeters.

9

10

THE COMMISSIONER: What is the appropriate size of a liver?

11

THE WITNESS: Of a liver?

12

THE COMMISSIONER: For a child of that age?

13

14

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THE WITNESS: Often to be palpable one, maybe one and-a-half centimeters below the costal margin, Mr. Commissioner, and they note, and I will have to find the page, 7 p.m. on December 17th they describe the liver as five to six centimeters. I will see if I can find that for you, maybe I can find that for you at the break.

19

20

Q. Doctor, you have referred to Page 44, the note at 1900 hours on the 17th.

21

A. Yes, there it is.

22

23

Q. There is an indication that the liver had increased to five centimeters.

24

A. Correct.

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Q. That is the note you are referring to?

A. Yes. Then again the liver had increased five to six centimeters despite anti-congestive therapy.

O. Doctor, also in that note at 1900 hours, there is an indication, as you indicated, both to the size of the liver and as well the indication that the child needs careful monitoring, that is at 7 p.m. on the 17th, correct?

A. Correct.

O. And if we move to the note that we referred to a moment ago at approximately 10:20 p.m. on the 17th. There is confirmation again by the attending physician, or at least the observing physician, that the child still required careful monitoring, nonetheless his condition at that stage appears to have been stable.

A. Correct.

Q. And then the very next note, recognizing that some of these notes appear to be out of order because there is a note on the next page, Page 46, December 17th.

A. Yes.

Q. The next note, again the bottom



1
2
3 of Page 45 is at 3:30 a.m., and that is the arrest
4 note. The doctor records that he was called by the
5 child's cardiac arrest at 2:50 a.m. and arrived at
6 3:20. Resuscitation had been continued for 45
7 minutes to no avail. Baby had been on IV, prostaglandin therapy; some apneic, is that stats?

8 A. I would say spells.

9 O. Spells, were recorded, and I
10 can't read the next word, baby's lobes?

11 A. I would say, however, no
12 bradycardia.

13 O. All right, however, no bradycardia, prostaglandin was continued because of risk
14 of ductal closure.

15 A. Right.

16 O. The digoxin had been held
17 yesterday in a.m. and p.m., because of level of
18 3.9.

19 Now, stopping there, Doctor, the
20 biochemistry reports for this child indicate that
21 a sample was taken on December 17th which resulted in
22 a level of 3.7 nanograms for digoxin.

23 A. Correct.

24 O. Twice, however, in the progress
25 notes we find a reference to a level of 3.9, and again



1
2 in the discharge report in the record we find a
3 reference to the 3.9 level all attributed to December
4 17th.

5 A. Yes.

6 Q. I am not sure, Doctor, that
7 much turns on .2 nanograms, but can you help us,
8 do you know or have any reason to believe that the
9 level recorded on the biochemistry computer sheet
10 is inaccurate?

11 A. No, I saw that discrepancy
12 as well, I have no explanation for it.

13 Q. Doctor, on the basis -- I am
14 sorry.

15 A. I would like to clarify one
16 thing, that note you refer to on the bottom of Page
17 45?

18 Q. Yes, Doctor?

19 A. That was the staff physician's
20 note, Dr. Vera Rose, R-o-s-e, and that note was
21 obviously written, she was not in the hospital at the
22 time, and I believe she had come into the hospital and
23 wrote that note.

24 Q. Doctor, if we look at the next
25 page, then, on Page 46 a note attributed to the 18th
of December, and this note appears to have been written



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by Dr. Mountstephen at the time of the arrest.

A. Yes.

Q. He was called at 2:30 hours and he arrived to find the baby being bagged, external cardiac massage being done, the child was asystolic, various medications and resuscitative measures were undertaken with no electrical response; 45 minutes into arrest; no electrical activity; pupils fixed and dilated, no output and cardiopulmonary resuscitation was stopped.

A. Yes.

Q. I take it Dr. Mountstephen was present for part of that resuscitative effort and those were his observations at the time?

A. Yes, I would agree.

Q. Doctor, you referred as well in your report in letter of December 18th to Dr. Miller, apart from your having been as you then described it, disturbed by the child's demise and you indicated you doubted that the demise could be explained purely on the basis of apnea secondary to the prostaglandin therapy, and at the time of writing the letter you really did not have a good explanation for the baby's sudden deterioration and death?

A. Yes.



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Q. Can you help me, Doctor. I take it that at that time you did not feel, on the basis of the information that had been provided to you that the death was attributable to the prostaglandin therapy and related apnea?

A. Correct.

I also formulated that letter, Miss Cronk, on my understanding that this baby had a good response to prostaglandin. If it had a good response to prostaglandin I would have thought it would have survived to make it to surgery, It is quite apparent that I was wrong and I am embarrassed about that.

Q. Well, Doctor, ---

MR. ORTVED: Let him finish.

MS. CRONK: I am sorry.

THE WITNESS: I was saying I am embarrassed by that and I think perhaps, like a lot of things in life, much better than my letter is the hospital record that speaks for itself. This was a very ill baby, it did not have a good response to prostaglandin; it had a larger liver and, indeed, the fact that this baby's bilirubin was so high I would even wonder if there was liver disease secondary to heart failure and inadequate perfusion.

So, as I said, I am uncomfortable about this letter, I wish I had the chart at the time and



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it taught me an important lesson.

Q. Doctor, surely, and I accept that fully, after you had an opportunity to review the hospital record, I take it that your opinion changed rather dramatically from what had been indicated in your report?

A. Right and I even, I believe, when I discussed it with the police some months after this baby died, I had already told them I was concerned about this letter.

Q. May we take it in two stages, Doctor? At the time of writing this reporting letter you had not had the opportunity to review the record, but you had observed the heart?

A. Correct.

Q. Was there anything based on your physical observation and examination of the heart that suggested to you that the death of the child was attributable to the anatomical condition of the child?

A. Yes, the heart disease itself was very severe.

Q. And following your observation of the heart, you then subsequently reviewed the record and having reviewed the record did you then formulate an opinion as to the probable cause of death



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of this child?

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A. Yes.

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Q. And if so, could you tell us

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what that opinion was?

6

A. Yes. I thought the baby died

7

as a direct consequence of a severe narrowing of the

8

aorta. That the baby died from severe heart failure.

9

That in a baby that did not have an adequate
response to prostaglandin.

10

Q. Fairly, Dr. Freedom, I should

11

tell you that Dr. Rowe testified that in his

12

view the death of this child was not induced by the

13

prostaglandin therapy and the child's reaction to it.

14

A. Right.

15

Q. Do you share that view?

16

A. Yes.

17

Q. Can you tell me, then, what

18

you meant when you said in describing your

19

opinion then formed as to probable cause of death,

20

the relevant factor was the child's failure to respond
to prostaglandin therapy?

21

A. I'm not sure I understand you.

22

I feel that if this baby had responded to prostaglandin

23

opening of the ductus that the baby should have done bet-

24

ter. The fact that the baby had not responded to

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3 prostaglandin had a severe and unopened narrowing
4 I think contributed directly to this baby's death.

5 Q. I see, but the prostaglandin
6 treatment itself did not trigger the death in your
7 view?

8 A. Right.

9 THE COMMISSIONER: Does prostaglandin
10 ever have that effect?

11 THE WITNESS: Yes, it has been described,
12 Mr. Commissioner, as promoting profound apnea, seizures
13 and hypotension.

14 Q. Doctor, we have mentioned the
15 digoxin level that was recorded on the 17th of
16 December at the hospital.

17 A. Yes.

18 Q. And the evidence to date indicates
19 that the child as well was digitalized at the referring
20 hospital in Winnipeg and received a total digitalizing
21 dose of 50 milligrams per kilogram.

22 A. Right.

23 Q. Dr. Rowe has testified for the
24 Commission that in his view the digoxin administered
25 in Winnipeg was insufficient to produce extreme toxic
symptoms. Do you agree or disagree with that view?

A. I agree with that.



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3 Q. Doctor, I take it inasmuch as
4 there is no reference in your reporting letter of
5 December 18th to the digoxin level that had been
6 recorded at the hospital, that you were either unaware
7 of the level that had been recorded on December 17th at
8 the time of preparing the letter, or you were aware of
9 it and attached no significance to it. Could you tell
10 me which was the case?

11 A. I was unaware of it.

12 Q. When did you subsequently become
13 aware of the digoxin level?

14 A. When I reviewed the chart after
15 the events of March 1981.

16 Q. And having done so, Doctor,
17 did you attach any significance to the digoxin level
18 when reconsidering the cause of death of the child?

19 A. No. It was certainly above what
20 we would consider a therapeutic level. It had been
21 held from the time of admission and so I was un-
22 concerned that this contributed to the youngster's
23 death.
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O. Well, that level in fact was
obtained on the day, on December 17th.

A. On admission.

O. The day before his death on
admission, is that correct?

A. Yes.

O. And there was no subsequent
level obtained in the hospital, the child didn't live
until surgery?

A. Correct.

O. That was the only level obtained?

A. Correct.

O. Doctor, did you in due course
at the time of conducting your overall review of this
chart review as well the final autopsy report and the
preliminary autopsy reports?

A. Yes.

O. Was anything revealed or dis-
closed in the final autopsy report that caused you to
reconsider your view as to the cause of death of this
child?

A. No. I think, Ms. Cronk, it
supported my concerns that the baby had a severe
narrowing of the aorta and some underdevelopment of the



1
2 left pumping chamber, had not had a response to the
3 prostaglandin.

4 Q. Did you, Doctor, after the date
5 of your December 18th reporting letter to the referring
6 physician have any further communication in writing
7 with him after this child's death?

8 A. Yes. Again, he had received
9 my letter and he sent me a letter in return suggesting
10 that perhaps he could find a reason that prostaglandin
11 could have accounted for this youngster's death. The
12 physician, that actually was Dr. Gordon Cumming from
13 Winnipeg, he suggested that perhaps if the ductus
14 had been dilated that the youngster could have flooded the
15 lungs. I passed that letter on to Dr. Peter Olley who
16 had been instrumental in the discovery of prostaglandin
17 and its use in children heart disease.

18 Q. Did you have any further com-
19 munications, Dr. Freedom, with Dr. Miller to whom you
20 had addressed your earlier reporting letter?

21 A. Yes, I spoke to him as well.
22 I can't remember the time framework. I remember that
23 he had called me or I had had some conversation with
24 him that he had been in touch with the Gosselin
25 family.

Q. And I take it you informed



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2 him at that time of your subsequent revision as to your
3 opinion as to the cause of death?

4 A. No, I am afraid I did not.
5 I believe my conversation with Dr. Miller was during
6 a time of Real's hospitalization. I don't remember if I
7 had gotten back to him with an addendum.

8 O. But you had conversations
9 subsequently with Dr. Cumming from Winnipeg, you said?

10 A. Well, you know, in the immediacy
11 of my letter back to him. So, it was not after March of
12 '81, it was after Real died, within the next month or
13 so.

14 O. All right. I take it, Doctor,
15 that in the case of Real Gosselin you were satisfied
16 that having reviewed the medical record that its
17 contents and your review of it helped you to establish,
18 although you had never been personally involved in the
19 care and control, medical control and management of
20 this child during life, helped you to establish an
21 opinion as to the cause of death?

22 A. Yes.

23 O. Doctor, you mentioned as well
24 that the timing of the review of the Gosselin chart
25 was done at a time when you were reviewing all of the
medical charts of the children who had died on the



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cardiology wards?

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A. I can't remember if it was all the children. I know that we, after the events of March of '81, the physician to whom these children had been referred went back over the charts in great detail. So, again, that's when I reviewed Real Gosselin.

9

10

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O. Did you at some point undertake a complete review of the medical records of all of the children who died between July of 1980 and March of 1981?

12

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A. I know that our division had looked over all of these deaths. I can't say that I in particular have looked over the charts of every one of the children who died.

16

17

O. All right. Doctor, with reference now to Stephanie Lombardo.

18

19

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22

A. Yes.

O. You told us yesterday, if I correctly understood your evidence, that once again you had no direct involvement in the day to day care and management of the child during her life, is that correct?

23

24

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A. That is correct.

Q. You did, however, as I understand



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3 it once again, performed a cardiac catheterization
4 on the child on December 15th?

A. Correct.

5
6 Q. If we turn to Page 66 of the
7 record of Stephanie Lombardo, which is Exhibit 78.

A. Page 66?

8
9 Q. That's correct. Do we find there,
10 Doctor, your report as to the results of the
11 catheter study that you had carried out?

A. Correct.

12
13 Q. And your findings at that time
14 as I take it are fully set out under the Final Diagnosis
15 section?

A. Correct.

16
17 Q. Of the report?

A. Correct.

18
19 Q. And were primarily that the
20 child suffered from tetralogy of Fallot with severe, and
21 I am hesitating.

A. Infundibular.

22
23 Q. Infundibular and valvar pulmonary
24 stenosis.

A. Yes.

25
Q. That was the predominant finding?

A. Well, I would think, Ms. Cronk,



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3 the first two features were the predominant. I think
4 perhaps the severe hypoplasia of the main and branch
5 pulmonary arteries, I could continue that in the same
6 line because it was so important to this child.

7 O. All right. You are referring
8 now to the second entry under the diagnosis section
9 of your catheter report?

10 A. Yes.

11 O. All right. And those two in com-
12 bination reflect the fundamental problems that the
13 child was suffering?

14 A. Correct.

15 O. Doctor, having completed the
16 catheter procedure on Stephanie Lombardo, did she
17 in your view tolerate the procedure well?

18 A. Again, I can't recall. I have
19 not gone over this chart in great depth because my in-
20 volvement with Stephanie was just at that one point in
21 time. So, I would have to ask your permission to review
22 the chart in depth before I answer.

23 O. Well, I am not necessarily ask-
24 ing you to do that, Doctor. I take it you have no
25 present recollection as to whether any difficulty was
encountered during the procedure or as to whether it
was in fact not encountered.



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A. Well, I don't have any present recollection. Our group sees a tremendous number of patients, so, I mean, it was conceivable the baby did have problems, but I just don't recollect them.

Q. Doctor, following the completion of the catheter study, did you have any further direct involvement with this child at all during life?

A. No direct involvement. I do remember reviewing the angiograms at our morning conference and discussing the concern that we all had that her pulmonary arteries, her lung arteries were very, very small.

Q. All right. And in addition to that discussion, I take it that you would have been present at the morning cardiology conferences when your case would have been reviewed on a number of occasions prior to her death?

A. Correct.

Q. All right. Following her death, Doctor, did you attend at the --

A. I don't believe she had an autopsy.

Q. That's why I am hesitating, I don't think there was an autopsy of this child.

A. No.



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3 Q. On the basis of the understand-
4 ing that you gained as to her anatomical condition
5 based on the catheter study and the discussions that
6 were held during the cardiology conferences, were you
7 in a position following her death to formulate any
8 opinion as to her cause of death or did you undertake
9 a review of her record at any time for that purpose?

10 A. I didn't per se, Ms. Cronk,
11 review her record in that regard. I have had conversa-
12 tions with Dr. Rowe about this child.

13 Q. Do I correctly take it then,
14 Doctor, that following her death and continuing to date
15 you have not undertaken a review of her record for the
16 purposes of determining in your own mind what would be
17 a likely or probable cause for her death?

18 A. I have not done that with this
19 particular chart.

20 Q. All right, thank you, Doctor.
21 It is our understanding, Doctor, that
22 Stephanie Lombardo was not prescribed and did not
23 receive digoxin in the hospital during the course of
24 her last admission. Are you aware of any instance at
25 the hospital when digoxin was administered to this
child?

A. Again, Ms. Cronk, I just would



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3 have to beg the issue. I have not gone through this
4 chart. If you say she was not prescribed digoxin,
5 I believe you.

6 Q. Well, I take it, Doctor, you
7 do not have any knowledge on that matter?

8 A. Correct.

9 Q. Thank you. Doctor, could I
10 refer you next then to the medical record of Jesse
11 Belanger, which is Exhibit 79.

12 As I understand it, Doctor, you did have
13 more direct involvement with this child than you had
14 had in the case of Stephanie Lombardo?

15 A. Correct.

16 Q. Once again, Doctor, the child
17 was admitted on November 18th, 1980, two days after
18 birth and subsequently died in the hospital on
19 December 20th, 1980. As I understand it, you were
20 designated the Hospital for Sick Children referring
21 physician for this child, is that correct?

22 A. Correct.

23 Q. And, further, you examined the
24 child on the day of its admission to the hospital, that
25 is, November 18th?

A. Correct.

Q. Could I refer you, Doctor, to
Page 75 of the record to a report of consultation



10 1
2 which I take to be your consultation note following
3 the examination of the child on November 18th.

4 A. Correct.

5 Q. All right. And do I correctly
6 take it, Doctor, by virtue of the comments set out
7 on Page 1 of the consultation note that your impression
8 at the time of the admission was that the child was
9 suffering from complex congenital heart disease and
10 that you based this impression in part on the results
11 of a two-dimensional echocardiogram that had been
12 performed that day?

13 A. Yes.

14 Q. And if we turn to the next page,
15 Doctor, Page 76 of the record. You indicate that,
16 "At the present time, infant is not
17 in congestive heart failure -- but
18 certainly needs cardiac catheterization
19 to define more clearly the anatomic and
20 hemodynamics --"

21 Am I reading that correctly?

22 A. That's correct.

23 Q. All right. And you suggested
24 there was some suggestion of some degree of what I
25 take to be pulmonary stenosis.

A. Yes.



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Q. And complex congenital heart disease. Is that correct?

4

A. Correct.

5

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Q. Now, subsequent to having examined the child, Doctor, did you proceed to conduct a cardiac catheterization?

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A. Yes.

9

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I can't remember the exact day I did it. We had considerable concerns about this baby and the dysmorphic features. I believe we didn't do it on the 18th, we did it, I believe, a day or so later.

11

12

Q. All right.

13

A. I'll have to check that.

14

15

Q. Did you conduct the catheter procedure?

16

A. Yes, I did.

17

18

Q. And subsequently, as I understand it, following catheterization the child underwent surgical repair in December; my understanding is December 22nd.

19

20

A. Correct.

21

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Q. Right. Doctor, could I ask you to turn to Page 8 of the record, if you would, please. That is a letter from Dr. Williams, the Division of Cardiovascular Surgery, addressed to yourself?

23

24

A. Yes.

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O. Dated December 23rd. I take this to be Dr. Williams' reporting letter concerning the surgery that had been performed.

A. Correct.

O. Do you recall receiving this letter from Dr. Williams?

A. Not specifically, but Dr. Williams is very conscientious and I am sure I did receive it at the time.

O. In respect of the surgery that had been conducted on December 22nd, Doctor, Dr. Williams records in his letter to you that, first, the surgery had in fact been performed. He describes the process that was conducted in respect of the procedure and then indicates, at the bottom of the second paragraph that,

"The positioning of the shunt seemed ideal, but I am concerned that it is a bit small."

He continues:

"Postoperatively, he has been stable and his saturation has been hovering about 70% to 80%."

And that the surgeons were still watching him as to whether his shunt was sufficiently large. He thought



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that there was then much further question about the size of the shunt and they should probably re-operate and do a central shunt.

A. Right.

Q. Can you help us, Doctor? As I understand it, the child went from surgery to the ICU.

A. Correct.

Q. And then ultimately back to the neonatal ward until he was transferred on December 27th to the cardiology wards where he died early in the morning of December 28th. Is that correct, Doctor?

A. Correct.

Q. Once the child had been re-admitted to the cardiology wards, Doctor, did you have any direct involvement in his care and management?

A. No, I did not.

Q. Do you remember examining the child at all at that stage?

A. No.

Q. Are you familiar, Doctor, with the terminal events sustained by this child?

A. Only on recent review of this hospital record.

Q. I take it you were not contacted nor were you present at the time of the arrest and the



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3 resuscitative efforts of this child?

4 A. I believe I was informed after
5 this youngster had died about the events, but again,
6 I wasn't there at the time the baby died.

7 Q. Doctor, once again it is my
8 understanding and we have heard in evidence that no
9 digoxin was prescribed or, in accordance with the
10 evidence afforded by the medical records, administered
11 to this child. Is that your understanding as well?

12 A. Yes.

13 Q. Doctor, this child did proceed
14 to autopsy, as I understand it. Were you present at the
15 gross autopsy?

16 A. I do remember, I believe, in
17 seeing his heart but I can't remember specifically.

18 Q. All right. On the basis of your
19 initial examination of the child, your conduct of the
20 catheter study, your subsequent review, I take it, of
21 the chart and your observations of the heart itself
22 at post mortem, did you, following Jesse Belanger's
23 death, formulate an opinion as to the probable cause
24 of his death?

25 A. Yes, I was concerned that the
shunt was on the small side. I was concerned that
this youngster had had collapse, significant collapsed



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portions of his left lung. Again, I was very concerned as well about the dysmorphic features that this baby had with a cleft palate and lip, the eye problems, so-called colobomas of his eyes.

O. Can you explain briefly, Doctor, what that is?

A. It is a deficiency of the pupils and I guess one of the colloquialisms is that children look like they have cat eyes and not infrequently when one sees a baby with these multiple dysmorphic features, midline problems, that is, with mouth and palate, nose, there is not infrequently and unfortunately so an association with severe congenital abnormalities of the brain.

O. Were those the features that you considered significant, Doctor, in arriving at your opinion as to the cause of death?

A. I am always concerned about a baby with cleft palate and lip. During any type of surgical procedure they tend to aspirate fluid secretions into their lungs. They don't coordinate their swallowing and, again, I think in the back of Dr. Saunders' mind, who referred this baby to me, he was very concerned as to the well being of this baby beyond just the heart and the cleft lip and palate. He was



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very concerned there might be a substantial congenital malformation of the baby's brain.

Q. Well, Doctor, so that we are clear. Other than the factors that you have just outlined and which were a source of concern to you, were there any other features in this child's condition or present at the gross anatomy of the child that you considered significant in attempting to determine what caused his death?

A. If I remember as well, it wasn't just the baby had a partial Di George Syndrome. Maybe I am mistaken. I will have to check on that.

Q. To assist you in that regard, Doctor, I would refer you to the preliminary autopsy report at Page 18 which does, in fact, record a partial Di George Syndrome.

A. Right.

Q. Was that something at gross autopsy based on your observations of the heart, you felt to be a condition of the child?

A. Well, yes, in a sense that children with so-called partial Di George Syndrome are often more prone to infections. So, on a baby that has severe heart disease, a shunt, collapse of the lung, I was very concerned as well to hear about the



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partial Di George.

Q. All right. Anything else, Doctor?

A. I believe as well the autopsy of this child did have a severe congenital malformation of his brain, so-called arrhinencephaly.

Q. I'm glad you didn't ask me, Doctor, but do carry on.

A. Again, children with bilateral arrhinencephaly are in terribly severe malformation of the brain. For the children with it that survive without heart disease, they often have problems with coordination, swallowing movements, and sort of the normal involuntary things that we all do.

Q. Doctor, we know from the progress notes that are contained in the record that amongst the terminal events suffered by Jesse Belanger, he exhibited paleness in color, a blueness in color.

A. Right.

Q. He became bradycardic?

A. Correct.

Q. At one stage his pulse was undetectable and he had intermittent, what has been described in the progress notes, as intermittent nodal complexes. Are those part of the terminal events sustained by this child based on your knowledge of the case?



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A. Yes.

Q. Right. In your view, Doctor, of those terminal events, are there any or in combination, are the terminal events indicative to you of digoxin intoxication?

A. No.

Q. At the time of the child's death and upon observing his heart at gross autopsy, did you consider or did it come to mind that digoxin intoxication might have been a contributing factor in his death?

A. No.

Q. To your knowledge, was that a matter, Doctor, that was discussed at the cardiology conferences immediately following his death or thereafter?

A. No.

Q. Subsequently, Doctor, after the child's death -- well, perhaps I could refer you first if you would to the cardiac operation sheet, another one of the forms that appears to be filled out by the surgeons after a child leaves the operating room. It is at Page 102 of the record. Once again, Doctor, if I could refer you to the remarks section of the operation sheet.



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A. Yes.

Q. It's recorded that:

"The child died suddenly on transfer to
4-A!"

A. Yes.

Q. The post mortem findings, the
comment:

"Okay 24 hours earlier with..."

And I have difficulty reading the balance of the entry.
Can you help me?

A. No, I have the same problems.

Q. All right.

A. It looks like with the c, with
a little slash over it is with murmur of something.
I can't make out the rest of it.

Q. I think the last word is
color, Doctor, but perhaps I can check that at the
break and let you know.

A. All right.

Q. With respect to the surgeon's
note as to the death of this child, do you agree,
Doctor, that the death was sudden upon transfer back
to the ward?

A. Well, he was transferred back
on, I believe it was the 26th or 27th, and died the 28th.



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So, the baby was ill, there was concern about staphylococcal infection, inadequate shunt, collapse of the lung and, again, I think that the youngster did have a cardiac arrest and, I guess, I think that looks like Dr. Williams' writing to me, interpreted those events from what his understanding was that it was sudden.

Q. Well, Doctor, I am interested for the moment in your view of the matter. A review of the record indicates that the child was transferred back from the neonatal ward to the cardiology wards on December 27th.

A. Yes.

Q. And that he died within a matter of several hours, having been transferred back to the ward?

A. Yes.

Q. In your view, based on your knowledge and observation of this child, was his death sudden at that time?

A. No. I think this was a baby that had shown clinical evidence of deterioration, had raised considerable concern with his lung being collapsed, with the propriety of the shunt size. So, I think it was gradual deterioration which then culminated in his arrest and death.

Q. Doctor, if he was in this



Freedom, dr.ex.
(Cronk)

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situation or in the process of a continuing mode of deterioration while he was in the neonatal ward, in the normal course of events would you have expected him to be transferred out of the neonatal ward back to Ward 4-A/B?

A. I think that, again, I can't speak for the neonatologists and what their feeling was at the time. I believe that they feel once an infant with complex heart disease has heart surgery they would better be managed by the cardiac service directly.

Q. Doctor, did you subsequently after the death of Jesse Belanger become aware of the results of the digoxin assay tests that were conducted in respect of tissues from his body by the Center of Forensic Sciences?

A. I can't remember precisely.



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Q. Dr. Rowe has testified, Doctor, that based on the forensic aspects of this child's case, and by that the digoxin levels that were recorded in the tissues that were tested at the Centre for Forensic Science, that this was a child in his view whose death might be attributable to digoxin intoxication.

Is that a view that you share?

A. You have to refresh me, Miss Cronk, what the findings were of the tissue. It was my understanding that this youngster had not had digoxin prescribed during his hospital course.

MS. CRONK: Well, Mr. Commissioner, I am conscious of the time, and perhaps if we took our break now...

THE COMMISSIONER: I was just wondering, if Dr. Freedom has not applied his mind to the subject, if digoxin poisoning is not precisely his speciality, would it be that helpful?

MS. CRONK: That is a matter that I can explore with him and his knowledge of Mr. Cimbura's testing results at the break, Mr. Commissioner.

THE COMMISSIONER: All right. Well, we will take 20 minutes anyway.
---Short recess.



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---Upon resuming.

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THE COMMISSIONER: Yes, Miss Cronk.

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MS. CRONK: Thank you,

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Mr. Commissioner.

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MR. SCOTT: I wonder if I might

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just deal with a small matter?

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THE COMMISSIONER: Yes.

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MR. SCOTT: It would be helpful to

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all counsel - I speak only for myself - and it

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certainly would be helpful to me if Miss Cronk when

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she refers to Dr. Rowe's evidence and summarizes it,

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from which she has drawn the summary because we

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don't agree in every case that the summary is accurate

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and if we simply have the page we can then check it
later.

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THE COMMISSIONER: Yes.

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MS. CRONK: I would be glad to do

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that, Mr. Commissioner.

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THE COMMISSIONER: I think Miss Cronk

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can do that. She indicated to me that she had all of
those pages.

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MR. SCOTT: Sure she can do it.

22

THE COMMISSIONER: If you had done

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this to me many years ago I wouldn't have had the

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2 faintest idea of what page it was on but of course
3 in those days we didn't have transcripts.

4 MR. SCOTT: And we weren't trained
5 like these young lawyers are trained.

6 THE COMMISSIONER: That is right.

7 MR. SCOTT: The only reason she isn't
8 doing it is just to keep me on my toes.

9 MR. PERCIVAL: Or awake.

10 Mr. Commissioner, one thing that
11 troubles me and I have tried to gain some guidance
12 from other counsel is where we are going in relation
13 to this witness. I gathered the intention of
14 Miss Cronk is to try and finish examination in chief
15 of Dr. Freedom today. I understand that it is her
16 desire to continue tomorrow.

17 THE COMMISSIONER: Yes. What we
18 will do - incidentally I should say that I would
19 like to quit at 10 minutes to 4:00 because I still
20 have the remnants of another job that I still have
21 to attend to from time to time and it starts at
22 4 o'clock.

23 MR. PERCIVAL: Yes.

24 THE COMMISSIONER: So I thought we
25 wouldn't have a break this afternoon. We would just
go from 2:30 till 10 to 4:00, and by that time



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2 presumably Miss Cronk will be finished but if she
3 isn't finished what we would call the examination
4 in chief isn't finished anyway because we have
5 Mr. Scott and Mr. Ortved to deal with.

6 MR. PERCIVAL: Yes.

7 THE COMMISSIONER: And then we will
8 proceed with the cross-examination by everyone
9 tomorrow that we can get in, not of course including
10 Jewish lawyers who won't be here.

11 MR. PERCIVAL: Yes. I have
12 difficulties if it doesn't finish. If I don't get
13 to the position of cross-examining tomorrow,
14 Mr. Commissioner, I have difficulty on Monday because
15 I have to be in the Law Reform Commission of Ontario.

16 THE COMMISSIONER: I wonder - that
17 seems like a good cause - I wonder if we could let
18 him go first. Have you any views on that?

19 MR. SCOTT: I have no objection to
20 that.

21 MR. ORTVED: No.

22 MR. SCOTT: If he will promise to
23 look at the Inquiries Act when he said the Law
24 Reform Commission, I would be doubly grateful.

25 THE COMMISSIONER: Yes. Have you
any objection to that?



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MR. ORTVED: No, none at all.

THE COMMISSIONER: Then you can
count on going probably not today but first thing
tomorrow morning.

MR. PERCIVAL: All right. Thank
you, Mr. Commissioner.

THE COMMISSIONER: Mr. Hunt, I didn't
ask you. Is that all right with you?

MR. HUNT: Yes.

THE COMMISSIONER: Yes, Miss Cronk.

MS. CRONK: Thank you,
Mr. Commissioner.

Q. Dr. Freedom, during the six
month period that we have just been reviewing and
deaths that occurred on the cardiology ward between
July and December of 1980 by the end of December
there were a total of some 22 children who had died
on those wards.

Can you tell me, Dr. Freedom, as at
the end of December, 1980, to the best of your
knowledge had a postmortem digoxin level ever been
ordered in respect of a cardiac pediatric patient
who had died on the cardiology wards?

A. No.

Q. Had you personally made a



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request for a postmortem digoxin level as at the
end of December, 1980?

A. No.

Q. Doctor, referring briefly
to the third morbidity and mortality meeting which
you had told us was held on January 12th, 1981, we
have had admitted as an exhibit before the Commission
Exhibit 96, a series of handwritten notes that were
prepared by Dr. Rowe and Dr. Jedeikin in preparation
for that meeting.

To assist you briefly, Doctor, we
heard in evidence that there was in addition some
four children on Exhibit 96 - I will refer to the
fourth page, Dr. Freedom - do you see the heading
July 1980 to December 1980 on the fourth page?

A. Yes.

Q. All right. And do you see
the circle on the left hand side of the page which
appears under the notation "George Trusler's list"?

A. Yes.

Q. And immediately below that
the entry "RMF addition". Beside that and circled
the names Volk, Belanger, Lombardo, Gosselin.

Can you tell me, Dr. Freedom, do you
have any recollection of being requested by Dr. Rowe



1
2 or anyone else to assist in the compilation of names
3 of children whose deaths should be reviewed at the
4 January 12th mortality meeting?

5 A. I don't have a specific
6 recollection, you know, about these four names.

7 I know that Dr. Rowe often would
8 request from me information about children that had
9 complex heart disease or who had died. Unfortunately
10 I wasn't at that January meeting so I just can't
11 place that in the context.

12 Q. Thank you, Doctor. And
13 similarly at the bottom of the same page there is
14 an entry RMF provide 1 to 12 - and I take it to be
15 month infant pms?

16 A. Yes.

17 Q. Can you assist me, Doctor,
18 do you have any recollection prior to the meeting of
19 January 12 of being requested to provide information
20 with respect to postmortem results for the benefit
21 of those who were to attend the meeting?

22 A. That was an ongoing request,
23 Miss Cronk, since the time I was appointed to the
24 Hosiptal, and again I just can't remember anything
25 specific vis-a-vis this notation of Dr. Rowe.

Q. Thank you. Do you recall



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anything specific in that context in respect to
the meeting of January 12th?

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A. No.

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Q. Doctor, if we could move to

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the death of Janice Estrella.

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A. Yes.

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Q. Who died at the Hospital on

9

January 11th, 1981.

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A. Yes.

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Q. As I understood your evidence

12

yesterday you had no direct involvement in the care
or medical management of this patient during life

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at the Hospital?

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A. That is correct.

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Q. Doctor, were you made aware

16

generally from time to time at the morning cardiology

17

conferences as to Janice Estrella's condition after
admission on the 11th?

18

A. Yes, and at the evening

19

sign-out rounds.

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Q. After her death, Doctor, did

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you have an opportunity to review her medical record?

22

A. After the events of March of

23

1981.

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Q. Not until then?

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A. Not until then.

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Q. I take it then, Doctor, at

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some point following her death you became aware of

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the antemortem digoxin levels that had been recorded

6

in respect of this child?

7

A. Yes.

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Q. Did you become aware of those

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levels prior to your review of the record in March

10

of 1981?

A. Yes.

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Q. Can you help me, Doctor, as

12

to the best of your recollection when you first

13

became aware of the levels that were recorded prior

14

to her death?

15

A. Again there were several

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discussions among the staff and at sign-out rounds

17

and with Dr. Walter Duncan who was the ward chief

18

that this youngster was not doing well and had had
elevated digoxin levels.

19

Q. Do you have any specific

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recollection as to the actual levels that were

21

recorded that were discussed at those meetings?

22

A. Again it is a little bit

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difficult today because I have gone over the notes -

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excuse me, the Hospital record - in depth. But if

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2 I recollect it was in the 4's to 7, in that range.
3 That is my recollection.

4 THE COMMISSIONER: This is during
5 her life?

6 THE WITNESS: During her life.

7 MS. CRONK: Q. Doctor, to assist
8 you the evidence to date has indicated in part from
9 the biochemistry reports that are contained in
10 Janice Estrella's medical record and in part from
11 the digoxin books maintained by Dr. Ellis that were
12 admitted as Exhibits in the preliminary hearing in
13 the Queen versus Nelles and similarly have been
14 admitted here, the evidence has been there were four
15 antemortem digoxin levels recorded at the Hospital
16 with respect to Janice Estrella. The first was a
17 level of greater than 5 nanograms which according
18 to Dr. Ellis' digoxin book ultimately resulted on
19 further dilution in a reading of greater than 9.4
20 nanograms.

21 The second reading was one greater
22 than 4.7 which on dilution was found to be 7.8
23 nanograms.

24 The third sample was insufficient
25 for testing purposes according to the entry in the
biochemistry reports, and the fourth, the sample



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obtained on January 9th, a level of 4.7.

Do those levels accord with your recollection as to what you understood the levels to have been during her life?

A. Again I have gone over the chart and I found one additional one on December 22nd of 1.5.

Q. Yes. I am sorry, Doctor, I was dealing only with those in January.

A. Okay. I'm sorry.

Q. You are quite right there was one on an earlier date of 1.5.

A. Well, again I don't remember back in December or early January of specific numbers. I was just told that they were elevated.

Q. Doctor, the Commission has also heard evidence concerning two postmortem digoxin level readings which were obtained in respect to Janice Estrella.

Could you turn with me, Doctor, to page 156 of the record.

We see, Doctor, on that biochemistry report at page 156 the recording of the date of a sample taken on January 11th, 1981. There is no indication on the biochemistry report as to the time



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at which the sample was taken or her sample type.

3

A. Yes.

4

Q. The number of the sample,

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however, is recorded as G89241 and a level of 72

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nanograms was recorded.

7

Can you help me, Doctor, do you have

8

any understanding or knowledge as to who ordered that

9

postmortem digoxin sample in respect of Janice

10

Estrella?

11

A. Well, I understand from

12

previous testimony that Dr. Taylor obtained that
sample at my request.

13

Q. Do you have any recollection

14

today, Doctor, of having requested Dr. Taylor to

15

obtain a postmortem digoxin level of Janice Estrella?

16

A. No, I have no recollection at

17

all, Miss Cronk, of asking Dr. Taylor to do so.

18

Q. When you referred to prior

19

evidence, are you referring to the evidence of

20

A. Yes.

21

Q. Excluding the case of Janice

22

Estrella, Doctor, I believe you told me earlier that

23

as at the end of December, 1980 you had not personally

24

ordered a postmortem digoxin level on any patient

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with which you were involved at the Hospital?

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A. Right.

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Q. Is that correct?

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A. Yes.

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Q. To your knowledge, Doctor,

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as at January, 1981, did the biochemistry laboratories

8

in the Hosiptal conduct postmortem digoxin level

9

assays?

A. For digoxin?

10

Q. Yes.

11

A. I don't know.

12

Q. Doctor, with respect to this

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particular sample, whoever ordered it --

14

A. Yes.

15

Q. -- and at whatever time it was

16

ordered, would you agree with me, Doctor, that the

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level is an extraordinarily high level for a digoxin
assay result?

18

A. Certainly the number that is

19

reported is very high.

20

Q. Had you in your experience

21

at the Hospital, Doctor, prior to the case of Janice

22

Estrella had any experience with a digoxin assay

23

result in the range of 72 nanograms?

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A. No.

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Q. Be it post mortem or ante
mortem?

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A. No.

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Q. Doctor, with respect to this
level, could you help me as to when you first became
aware that a postmortem digoxin level had been
obtained on Janice Estrella at 72 nanograms?

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A. About - I think it was about
two or three weeks later I had a very casual conversa-
tion with Dr. Taylor.

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He said to me what do you think of a
digoxin level in Estrella of 72 and that was the first
that I had heard of it.

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Q. Do you recall the occasion of
the discussion? Dr. Freedom, do you recall where you
were when that discussion took place?

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A. Again I have given evidence
previously I thought it was in the autopsy room.

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Q. All right. And when you say
two to three weeks later, later than what?

A. After the child's death.

Q. After the child's death?

That would place the timing then of your discussion
with Dr. Taylor in the latter part of January?

A. Yes. But again I am a little



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bit foggy on the time framework.

THE COMMISSIONER: When you say the autopsy room, I take it was some other baby's autopsy. It wouldn't be --

THE WITNESS: Well, because my research interest is in cardiac anatomy I am often in the autopsy room.

THE COMMISSIONER: Yes, yes, but certainly this wasn't at the time of the autopsy of the child?

THE WITNESS: Correct.

MS. CRONK: Q. Well, to be clear, Doctor, did you attend the gross autopsy of Janice Estrella?

A. No, I did not.

Q. Did you subsequently observe her heart?

A. No.

Q. Doctor, with respect to your discussion with Dr. Taylor do you recall today what you were informed by him with respect to this level?

A. He asked me in sort of a casual fashion what do I think of a level of 72 in Janice Estrella and my recollection of the conversation was that, Jesus, that value is so out of hand



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that it is either a calculation error, a decimal error, a problem of biochemistry or perhaps a sample had been drawn from a contaminated source.

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Q. Did you enquire at that time, Dr. Freedom, of Dr. Taylor as to the source of the sample and the method of its having been taken?

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A. No. What I said to Dr. Taylor when I made those remarks was that I thought he should check back with biochemistry to see if there was a problem and get back to me.

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Q. Do you recall, Doctor, whether the suggestion of an error having occurred in the biochemistry lab was an impression or reaction that you had at the time of hearing of the level or was it a matter of discussion between Dr. Taylor and yourself?

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A. No, I think it was the first thing that came to my mind, Miss Cronk, when I heard of a level in the 70s.

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I had recalled that this baby had had high levels, you know, in the 4 and 7 range, so when I heard 72 I automatically thought the first thing was a decimal point error, 7.2 versus 72.

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Q. Would you agree with me, Doctor, that had a decimal point error occurred such



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that the true reading was 7.2, that level in itself was significantly higher than what would have been considered a normal therapeutic level for digoxin in a child of this age.

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A. Yes, I would agree with that.

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Q. And it would as well have been significantly higher than the last recorded digoxin level during the life of the child, 4.7, four days before she died?

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A. Yes. I would agree with that too.

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Q. Doctor, in respect of the --

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MR. SCOTT: Just to be clear, did Miss Cronk have that right or was the last reading greater than 4.7?

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MS. CRONK: I had understood from page 159 of the biochemistry report, Mr. Scott, that the last reading, the sample was taken on January 9 and it resulted in a level of 4.7 from the venous sample.

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MR. SCOTT: I am trying to get this whole case on one sheet of paper and I had it greater than 4.7.

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THE COMMISSIONER: Well, you are right if you just went back one day, you would have



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3 been right on the 8th. Apparently something went
4 wrong with the machine between the 7th and the 8th
5 because they could measure up to 5 on the 7th and
6 only at 4.7 on the 8th.

7 MS. CRONK: As I understand it,
8 Mr. Commissioner, the reading on the sample taken
9 or one of the samples taken on January 8th resulted
10 in a reading of greater than 4.7 which when traced
11 to Dr. Ellis' digoxin books suggests that the further
12 diluted reading was 7.8 nanograms. That is January
13 8th.

14 There was another and differently
15 labelled sample also drawn on January 8th, and that
16 sample was an insufficient quantity for further assay-
17 ing. And then we move to January 9th and the sample
18 taken on that date was recorded at a level of 4.7.

19 Q. And, Doctor, I may have forgotten
20 your answer. Is it also your view that had a typo-
21 graphical or decimal place error occurred such that
22 the post mortem reading of 72 nanograms should in fact
23 have been 7.2 nanograms, that that level as well was
24 significantly higher than the last reported digoxin
25 level during Janice Estrella's life?

A. Yes, but certainly more
consistent with the numbers that had been recorded



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during life.

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Q. Although of course we know,

Doctor, that on the day before her death when the level was recorded at greater than 4.7, that level - I am sorry, January 8th - that that level at greater than 4.7 resulted in a reading of 7.8 nanograms.

A. Right.

Q. Doctor, did you yourself, having learned from Dr. Taylor of a 72 nanogram reading, check with the Biochemistry Department, be it Dr. Ellis, Dr. Soldin or any other individual involved with the laboratories to determine whether or not an error, a transmittal error or decimal error had in fact been made with respect to the reading?

A. No, I did not.

Q. Similarly, Doctor, did you have any discussion subsequent to your discussion with Dr. Taylor when he indicated to you the level of 72 had been recorded, did you have any discussion with any members of the Pathology Department or with Dr. Taylor to determine how and in what manner that sample had been obtained?

A. No.

Q. I understood from your earlier



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evidence you did, however, suggest that Dr. Taylor should review the matter to determine whether or not a decimal error had taken place, to check with the biochemistry people and determine how the sample had been obtained. Is that correct?

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A. Correct.

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Q. Did Dr. Taylor subsequently report back to you as to the result of those investigations?

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A. No.

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Q. Do you know in fact, Dr. Freedom, whether or not Dr. Taylor at your suggestion or request did speak to the biochemistry laboratory to determine if an error had obtained?

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A. No, I do not. When I didn't hear back it dropped from consciousness.

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Q. Did you have any subsequent discussion then at all with Dr. Taylor in the weeks following your discussion that you think took place in the autopsy laboratory concerning the 72 nanogram level with respect to Janice Estrella?

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A. I don't remember any of other conversation with Dr. Taylor about that level.

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Q. Having heard of the 72 nanogram level from Dr. Taylor, Dr. Freedom, did you communicate



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that level or discuss that level with any other member staff cardiologist or member of the cardiology division, pediatric?

A. No, I don't believe so.

Q. Do you recall having had any discussion with respect to that level with Dr. Rowe?

A. I can't recollect a specific discussion.

Again my feeling at the time was that this level was absurd; that I had never seen such a level.

I was also well aware of how pathologists often take blood, and at the time, although I didn't have a discussion with Dr. Taylor, the following image came to my mind, and that is why I suggested they check to see it was drawn.

Many times when a pathologist draws blood from a heart they cauterize the surface of the heart with a hot blade which liquefies the heart muscle, and often they will stick their needle through the heart where they cauterized it to get blood for postmortem cultures and other things. So the image I had was that perhaps they had stuck the needle through liquefied heart muscle and that in some way could have given a funny reading, and that was



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sort of my perception, such, you know, contamination,
check the way it was drawn and get back to me. But
I never heard again.

Q. Was that your perception,
Dr. Freedom, at the time that Dr. Taylor informed
you of the level?

A. Yes. He didn't say, Miss Cronk,
how he had drawn it or from what source.

He just said that he had drawn - what
did I think of a postmortem sample of 72 and often
that is the way I would have seen Dr. Taylor and
other of the senior pathologists draw blood, and so
that was my mental image of how the sample could have
become contaminated.



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Q. What was Dr. Taylor's reaction to the level, as you understood it, during your discussion?

A. It was very matter of fact. He didn't seem specifically concerned. I never received a written memo from him about it. Again, I would think that things that would concern me, I often would put it in memo form. He asked me once, in a casual fashion, I made a comment back to him and I never heard again.

Q. Did Dr. Taylor, during your initial discussion with him, Dr. Freedom, seem concerned as well that the sample might have been contaminated?

A. It was such a quick and passing conversation, Ms. Cronk, I certainly didn't have that perception at the time that he had grave concern about this number.

Q. Dr. Freedom, can you help me, having had the discussion with Dr. Taylor, at which time the level was -- you were informed of the level, having had the perception, I believe you indicated that the level might be contaminated and that there might have been a decimal error, or an error in the biochemistry laboratory, can you help me as to why you



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did not follow up with Dr. Taylor and ask him for the results of the investigations you had suggested be made by him?

A. Yes, I think so. We will, occasionally, in clinical practice, see a level of potassium, for instance, as very high, nine, ten, eleven, where up to five is normal. Often, the blood is hemolysed, the level is checked as soon as that result is obtained, and the more normal level or appropriate level is obtained. I suggested to Dr. Taylor that he check back, it was he who drew it, he knew how it was drawn and under what circumstances and I felt that would be the appropriate course of action.

Q. Did you, at the time, Doctor, have any impression that the -- if a level of 72 nanograms postmortem, as had been obtained, was reliable and an error had not been made, and contamination did not appear to have been the case, did you have any concern at that level that that would be a relevant factor in the death of that child?

A. Well, in Janice Estrella, she was very ill. She had not done well really, from the time of surgery, she had pneumonia, heart failure, all sorts of problems. Again, I don't think one needed



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3 other reasons, I think there was a concern of Dr.
4 Duncan that this was a sick baby with this specific
5 type of malformation, as we had seen, the progress
6 was poor, there was pneumonia. So again, at the time,
7 I think we all had ample medical concerns that this
8 youngster died as a result of cardiac disease,
9 intercurrent infections in a baby with underlying
Down's Syndrome.

10 Q. Well, Doctor, fairly, would you
11 agree with me that at the time that you were informed
12 of that level, 72 nanograms, that that was an
13 unprecedented level in terms of the height of the
level for a digoxin assay, in your experience?

14 A. Yes.

15 Q. And were you concerned by the
16 level once you were informed of it by Dr. Taylor?

17 A. Non particularly, I thought it
18 was so obviously an error that when I didn't hear
19 back from Dr. Taylor, as I said, it faded from
consciousness.

20 Q. At the time you were told of
21 the level by Dr. Taylor, Dr. Freedom, did you inquire,
22 or did you have any impression, as to whether or not
23 the death of Janice Estrella had been reported to
24 the Coroner's Office?
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A. I don't have any specific
recollection whether it was or was not.

Q. Was that a matter that you
considered, having been informed of the postmortem
level?

A. No.

Q. Dr. Freedom, presented in
evidence before the Commission and marked as Exhibit
149 is a copy of the Zebra pack entries for Janice
Estrella, and contained in the Zebra pack entries is
an indication, several pages in, Doctor.

A. I don't seem to have that,
Ms. Cronk.

Q. I am going to give you this
copy, Doctor. It is an entry for the 1st of January,
1980, and I take that to refer to 1981, at 3:00 a.m.,
apparently signed by Dr. Schaffer, indicating:

"Coroner's Office notified, felt not
to be a coroner's case, consent for
post mortem agreed."

THE COMMISSIONER: I'm sorry, where do
I find this?

MS. CRONK: It is several pages in,
Mr. Commissioner.

THE COMMISSIONER: How many from the



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beginning, there seem to be many pages in 149 that are just electrocardiogram, and after that ---

MS. CRONK: It is Exhibit 149 and it is the 13th page in, Mr. Commissioner. Do you see the page entitled at the top, "post-operative"?

THE COMMISSIONER: Yes.

MS. CRONK: Are you looking at the record, Mr. Commissioner?

THE COMMISSIONER: No, no, I'm sorry, I'm looking at 149.

MS. CRONK: You are looking at 149?

THE COMMISSIONER: Yes.

MS. CRONK: You see the page marked, "post-operative", in large block letters?

THE COMMISSIONER: Yes, I saw that.

MS. CRONK: It is the next page.

Q. I'm sorry, Dr. Freedom, do you see that entry?

A. Yes, I do, thank you.

Q. All right. Were you familiar with the Zebra pack entries on Janice Estrella after her death?

A. No.

Q. Had you had an opportunity to review it at any stage following her death?



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A. No.

Q. Do you have any knowledge,

Doctor, as to the reporting of this death to the
Coroner's Office, or as to whether or not it was, in
fact, reported as is indicated in the Zebra pack?

A. I have no knowledge, Ms. Cronk,
other than what Dr. Schaffer put in his 3:00 a.m. note.

Q. Following your discussion with
Dr. Taylor when you were informed that a postmortem
digoxin level had been obtained, did you have any
discussion with any of the attending physicians, or
the physicians involved in the care of Janice Estrella
as to whether the case was then, in light of the
postmortem level, an appropriate or an inappropriate
one to be reported to the Coroner's Office?

A. No.

Q. Was it a matter that crossed
your mind, at the time, at all?

A. No.

Q. Dr. Freedom, can you help me as
well, again referring to page 156 of the record, which
is the biochemistry report, indicating the reported
level of 72 nanograms. You will see a hand-written
entry on the left-hand side of the page: "leg milked",
and on the right-hand side of the page: "Mainly gutter



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"fluid", do you recognize that hand-writing, Doctor?

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A. No, I don't.

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Q. Do you have any knowledge as to

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whose hand-writing that might be?

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A. No.

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Q. Doctor, as I mentioned earlier,

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there was, as well, a second postmortem sample,

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disclosed by the biochemistry laboratory reports,

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contained in the record of Janice Estrella. If you

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will turn to page 158, two pages later in the

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biochemistry report, you will see, a sample was drawn

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on January the 11th, 1981, again, no time for the

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drawing of the sample was indicated. A sample type on

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this page is not indicated. The sample number, however,

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is, and the level is recorded at greater than 4.7.

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Again, Doctor, would you agree with me,

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that that level was potentially higher and considerably

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higher than a level of 4.7 recorded on January the 9th

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for Janice Estrella?

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A. I guess, Ms. Cronk, greater than

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4.7 could be 4.8, but certainly it is greater than 4.7.

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Q. And, as has been said many times

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to date, we don't know how high up is.

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A. Or how low.

Q. We know that it is not less than



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4.7, don't we, Doctor?

A. Yes.

Q. Can you help me, Doctor, as to when you first became aware that the second postmortem sample with the level of greater than 4.7 had been obtained on Janice Estrella?

A. Yes, I believe either you or Mr. Lamek asked me if I knew there was a second level and that was the first I had heard of it.

Q. So, prior to the commencement of these proceedings, you had no knowledge concerning a second postmortem level for Janice Estrella?

A. Correct.

Q. Doctor, once again, having learned of the existence of the second level, do you have any knowledge which could be of assistance to us as to the identity of the individual who ordered the level?

A. No, other than as I stated already in my testimony here and at the preliminary inquiry of Miss Nelles.

Q. Doctor, as I understand your evidence, you said you recall having a discussion with Dr. Taylor, your recollection is, in the autopsy laboratory, at which time you were not informed of



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the level. You have also testified, if I understand it correctly, that you have no recollection of having requested Dr. Taylor to take a postmortem level on the Estrella child?

A. That is correct.

Q. Do you have any recollection of any discussion during your discussion with Dr. Taylor as to why that order was requested, or indeed, any recollection as to any discussion as to the circumstances under which it was ordered?

A. Well, again, I have spoken to him after the events of March, 1981. He stated that he had called me on a Sunday morning, I believe it was Sunday morning and I just have no recollection of a phone call.

Q. Doctor, during your initial discussion with Dr. Taylor when you were informed of the 72 nanogram level, I take it inasmuch you did not become aware of the second postmortem level until much more recently, that you have no recollection of any discussion at that time as to there being more than one postmortem sample on Janice Estrella?

A. Correct.

Q. Did you subsequently receive, Dr. Freedom, after the death of Janice Estrella, a



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copy of the final autopsy report that had been
prepared concerning her death?

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A. No, I don't believe I did.

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Q. Do you recall, Doctor, having
seen a preliminary autopsy report in respect of Janice
Estrella?

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A. Not specifically.

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Q. Doctor, when did the matter of
the postmortem digoxin level sample in respect of
Janice Estrella next come to mind after your discussion
with Dr. Taylor?

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A. I believe it was the weekend of
March the 21st.

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Q. Can you help me as to the
circumstances that presented themselves such that you
recalled, at that point, the postmortem level on
Janice Estrella?

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A. Yes. I had been in the
hospital on Saturday, doing a catheter study on two
babies, one of whom was Justin Cook. I was on-call
for that weekend, backing up Dr. Rod Fowler in the
cath lab. Allana Miller had died early Saturday
morning and I had called in Saturday evening, later
in the evening, to find out if I had more catheter
work, or could I take my shoes off. I was informed,

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at that time, that Allana Miller, who had died early that day, had a sky-high digoxin level and the comment was made, there are now three high levels, Pacsai, Miller and Estrella.

Q. Now, was that the first time, Doctor, subsequent to your discussion with Dr. Taylor at the end of January, that the Estrella postmortem level came to mind?

A. Yes.

Q. Doctor, prior to that discussion in the evening of March 21st, and we will return to this, had you been made aware of the digoxin levels that were recorded in respect of Kevin Pacsai?

A. Yes.

Q. Do you remember when you were informed of the digoxin levels on Kevin Pacsai?

A. I think it was later that week, 18th, 19th, in that range, the 17th, I just can't remember the exact timing, I knew it was later that week before the weekend.

Q. How did you become aware of the Pacsai digoxin levels, Doctor?

A. I think we were having, assigned our rounds, or a meeting, and Dr. Fowler had mentioned Baby Pacsai had a high digoxin level.



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Q. Did you understand that to be a high antemortem or high postmortem level?

A. I didn't have any understanding other than it was a high level, and I wasn't sure, at that time, whether it was during life or after life.

Q. Was the number of the level itself mentioned in that discussion?

A. I can't remember now. Again, I know what the number is, but at the time, just a very high level.

Q. And at the time that that level was mentioned to you by Dr. Fowler, Dr. Freedom, I take it, on the basis of your evidence, that the Estrella postmortem level did not come to mind?

A. I didn't think of it at all.

Q. In the intervening period between the death of Janice Estrella and the death of Kevin Pacsai, had any other digoxin level of a high or significant level come to your attention?

A. I can't remember when McKeil died, that was in October. No, McKeil had somewhat elevated levels during life, but no other one from Estrella.

Q. In the course of your discussion with Dr. Fowler with respect to the levels that had



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3 been obtained on Kevin Pacsai, Dr. Freedom, did you
4 gain the impression, or the understanding, that the
5 Pacsai level was indeed a high one?

6 A. Yes, I said that already. I
7 don't recollect exactly how high he said, but I
8 certainly remember it was high.

9 Q. Doctor, Dr. Rowe, during the
10 course of his evidence, testified, and I refer my
11 friends to Volume 16, page 2711, that he learned of
12 the postmortem digoxin level on Janice Estrella, the
13 level of 72 nanograms, at the time when the final
14 autopsy report concerning her death was received,
15 which he thought to have been the second week in
16 March of 1981.

17 He testified further at page 2711,
18 upon learning of the postmortem digoxin level of 72
19 nanograms in respect of Janice Estrella, that he
20 requested you to look into it a bit further, to check
21 it out, and to inquire -- I'm sorry, the reference is:

22 "I thought it was most likely to be
23 explained by one or other of those
24 points, and I think we talked about it
25 a little and suggested we get Dr.
Freedom to look into it a bit further.
Perhaps check out -- and he did have



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3 "some knowledge about that which I
4 think he has testified about previously.
5 And that was the way it was left."

6 Doctor, do you have any recollection of
7 Dr. Rowe, on or about the second week of March, 1981,
8 requesting you to check into the postmortem digoxin
9 level reading that had been obtained in the case of
10 Janice Estrella?

11 A. No, I do not. My mother had
12 died the preceding week and I had flown to Los Angeles
13 on, I think it was Saturday, March the 6th, coming
14 back late the evening of March the 12th. I was at
15 work on Friday the 13th, and I don't have any
16 specific recollection of either Dr. Fowler nor Dick
17 Rowe saying to me, would you check back into that
18 level.

19 Q. Well, indeed, Doctor, if you
20 first became aware, as you have told us, of the Pacsai
21 levels, during the evening of March 21st ---

22 A. No, I didn't say Pacsai, I said
23 Allana Miller.

24 Q. I am sorry, if the Allana Miller
25 postmortem digoxin level first came back to your mind
during the course of discussion on March 21st, can you
tell me whether you have any recollection of a



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2 discussion with Dr. Rowe prior to March 21st,
3 concerning the postmortem digoxin levels realized on
4 Janice Estrella?

5 A. I have no recollection, Ms.
6 Cronk, of any conversation with either Dr. Fowler nor
7 Dick Rowe about that Estrella level. And, certainly
8 after the events of that weekend I do, but not before.

9 Q. When do you recall first
10 discussing the matter of the Estrella digoxin levels
11 with Dr. Rowe?

12 A. It must have been Sunday or
13 Monday after Cook had died.

14 Q. You are referring to Sunday,
15 March the 22nd or Monday, the 23rd?

16 A. Yes.

17 Q. Can you help me as to what your
18 observations were at that time with Dr. Rowe, as to
19 the significance, if any, of the postmortem dig level?

20 A. Well, I think that, in view of
21 the events of the weekend, I certainly had more
22 concern about that level of 72.

23 Q. When you say more concern,
24 Doctor, what do you mean?

25 A. I had concern that, again, our,
my understanding of what a digoxin level after death



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2 has changed considerably since the events of March,
3 1981, but based on my knowledge back in 1981, in March
4 of 1981, I felt, if a digoxin level after death
5 that was 72 carried the same connotation of a level
6 during life, there was a problem.

7 Q. During the course of your
8 discussion with Dr. Rowe on either the 22nd or 23rd
9 of March, did you raise with him, or did he raise with
10 you, the possibility of contamination of the sample?

11 A. I can't remember, Ms. Cronk,
12 when contamination was raised by Dr. Rowe. I had
13 certainly felt, back in January, that this was one
14 possible explanation.

15 Q. During the time of your
16 discussion on March 22nd or March 23rd with Dr. Rowe,
17 did you yourself raise with him the possibility that
18 that sample might have been contaminated?

19 A. I certainly may have because it
20 was the same thing I felt when I spoke to Dr. Taylor.

21 Q. Do you recall today doing so,
22 Doctor?

23 A. No, I don't recall either way,
24 Ms. Cronk.

25 Q. And similarly, during your
discussion with Dr. Rowe on the 22nd or 23rd of March,



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3 do you recall raising with him, or do you recall his
4 raising with you, the issue as to whether or not there
5 had been an error in the biochemistry lab with respect
6 to that sample?

7 A. Again, I can't recall
8 specifically, but certainly that had been my concern
9 back in January. I think that as one tried to place
10 into perspective the Estrella number, vis-a-vis what
11 we now knew with Allana Miller and with Justin Cook,
12 of course, we had concerns that it was more than a lab
13 error.

14 Q. Doctor, in that entire period of
15 time, that is from the end of January, when you first
16 had your discussion with Dr. Taylor about the level,
17 until the evening of March 21st, when that level again
18 came to your mind, had you had any further discussion
19 with any member of the Pathology Department, or any
20 discussion at all with any member of the biochemistry
21 lab, with respect to that level?

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A. Well, I know I didn't have any discussion Ms. Cronk with the biochemistry labs and I can't remember any other conversation with a member other than Dr. Taylor.

MR. SCOTT: Mr. Commissioner, I would just like some guidance and a ruling if possible. We are concerned that this part of the Inquiry with what you can find out about how the babies died, it is conceivable that this line of questioning is appropriate in Dr. Rowe's case because he gave a background for the whole Inquiry. It seems to me that it is not appropriate in Dr. Freedom's case and I don't intend to cross-examine about it unless I am told that this is going to be relevant.

THE COMMISSIONER: I won't tell you that because I'm having great difficulty with the relevance of this.

MR. SCOTT: Now, it may be relevant in stage two in some fashion, but even I will have to leave that.

THE COMMISSIONER: Well, I will hear from Ms. Cronk. Where are you leading with this other than to say that they perhaps should have discovered something earlier or should have taken some steps earlier?

MS. CRONK: Mr. Commissioner, I make



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2 no suggestion nor do I encourage any inference in
3 that regard. I have completed my questions with
4 respect to the post mortem level.

5 THE COMMISSIONER: I know you have
6 completed them but now I am going to have to worry
7 about the cross-examination because Mr. Scott is
8 going to harass me about that too if anybody goes
into the subject.

9 MS. CRONK: The entire purpose,
10 Mr. Commissioner, in eliciting, in posing the
11 questions and eliciting these responses from
12 Dr. Freedom is simply to establish the circumstances,
13 at least, this witness' knowledge as to the
14 circumstances under which the sample was ordered,
15 the purpose for which it was ordered, the significance,
if any, to which he attached it.

16 THE COMMISSIONER: Yes. He says he
17 has no recollection of having directed that it be
18 ordered. He was informed that it was at an
19 astronomical level and he dismissed that as some
20 error.

21 MS. CRONK: Indeed, Mr. Commissioner --

22 THE COMMISSIONER: Do we need to know
23 any more than that?

24 MS. CRONK: And we heard Dr. Rowe's
25 evidence as well concerning the issues as to the



1
2 possible lack of reliability that could be placed on
3 that sample and I was interested to pursue with
4 Dr. Freedom his understanding of the basis upon which
5 it could be said that that sample may or may not be
6 unreliable and that I have now done.

7 THE COMMISSIONER: Again, I don't wish
8 to be insulting, but he is not an expert on the taking
9 of digoxin levels and the validity of them, at least,
10 you are not, are you, Doctor?

11 THE WITNESS: I would agree with that
12 entirely, Mr. Commissioner.

13 THE COMMISSIONER: So, I don't think
14 he can really help us much. We are going to have a
15 whole pack of pharmacologists come at us.

16 MS. CRONK: Mr. Commissioner, I am
17 content to leave the matter there. The purpose was
18 not to elicit his interpretation of the level.

19 MR. PERCIVAL: It may become relevant
20 tomorrow because certainly the matter of contamination
21 was raised by Dr. Rowe.

22 THE COMMISSIONER: Yes.

23 MR. PERCIVAL: And I would certainly
24 want to know from this witness whether or not that was,
25 so far as my clients are concerned, whether that was
raised and this is directly in line with that.

THE COMMISSIONER: Well, that may not



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2 be though, as Mr. Scott says, it may not be relevant
3 in this particular aspect.

4 MR. PERCIVAL: Well, I don't know
5 whether everybody is going to be called back the
6 second time or not. I mean, I have not heard a
7 ruling in relation to that, Mr. Commissioner.

8 THE COMMISSIONER: Well, I would love
9 to rule against calling everybody back but I don't
10 seem to have any chance. Mr. Lamek has conducted this
11 thing in this manner. If you can satisfy me that it
12 has some relevance to this particular aspect, that's
13 fine. If you can't satisfy me on that - if you can
14 satisfy me that it has something to do with the second
15 aspect we'll call them, as much as I hate the thought,
16 but we will and we will limit the cross-examination
17 to that aspect.

18 MR. SCOTT: Well, I'm here, I'm
19 instructed to be on my best behaviour and, so, I just
20 want to serve notice that I don't intend to cross-
21 examine with respect to these matters in this phase
22 unless you rule, sir, that it is relevant to how the
23 babies died.

24 THE COMMISSIONER: No. Well, I have
25 been asking Miss Cronk how it is relevant and I have
not with respect been satisfied that it is relevant
yet.



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2 MS. CRONK: Well, Mr. Commissioner, as
3 I say I am content to leave it there. The only
4 relevance I suggest to you is whether or not
5 significance was attached to the level by Dr. Freedom
6 that influenced his view as to the cause of death of
7 this child or indeed whether the information which he
8 possessed caused Dr. Rowe to alter his opinion as to
the cause of death of the child.

9 THE COMMISSIONER: It may conceivably
10 have something to do with the investigative process
11 but I don't see how that has anything to do with the
12 cause of death. We've got to determine what the cause
13 of death was, or attempt to determine what the cause of
14 death is, based upon all the evidence that we have
15 heard. The fact that Dr. Freedom may or may not have
16 had information and may or may not have appreciated
17 its importance back in January, February or March
doesn't seem to me to bear on that subject.

18 MS. CRONK: Mr. Commissioner, I am in
19 your hands and, as I have said, I am content to leave
20 the matter there.

21 THE COMMISSIONER: Okay. Well, I will
22 accept your offer.

23 MS. CRONK: With some relief to you
24 no doubt Dr. Freedom, may we move then to the case of
David Leith. You told us yesterday, as I understood
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2 your evidence, Doctor, that you had no direct involve-
3 ment in the day-to-day care or management of this
4 patient, is that correct?

5 A. Correct. As a matter of fact, if
6 there are any specific questions on Leith I have not
7 reviewed that chart in depth at all, Ms. Cronk.

8 Q. The only point that I wish to
9 establish for the record, Dr. Freedom, as I understand
10 it you did perform the cardiac catheterization on that
11 child?

12 A. Is that right?

13 Q. Do you recall doing that?

14 A. I do a lot of catheters, Ms.
15 Cronk. Why don't you help me out, what page?

16 Q. Well, Dr. Freedom, I would be
17 glad to help you out. Can I refer you to page 109 of
18 the record, please?

19 A. 109. Thank you, Ms. Cronk, you're
20 right.

21 Q. Okay. Doctor, I am certainly not
22 asking you to undertake a review of this record and I
23 understand that you haven't recently done so. But for
24 the purposes of the record and to make it abundantly
25 clear, following the conduct of the catheter
procedure on this child on February 1st, 1981, did you
have any direct involvement in his care and management



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during life?

A. No.

Q. All right. Did you, Doctor, subsequently attend or participate in the gross -- I am sorry, in cardiology conferences at which the circumstances of his death were discussed?

A. Yes.

Q. Did you as a result of that participation at any time form an opinion as to the cause of his death?

A. I felt it was due to the specific heart malformation that this baby had. Indeed, I had been interested in this very unusual type of heart malformation and had written several medical papers on the subject. We have almost no long term survivors of this type of disease and in discussion with the ongoing staff and ward chief I felt that the baby died with congestive heart failure secondary to his unusual form of left heart hypoplasia.

Q. Doctor, I don't wish to be unfair to you and I recognize that you haven't had an opportunity recently to review the record. May I simply ask you, are you today not having had the opportunity to review the record, familiar with the terminal events of this child?

A. I am not familiar but I will, if



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2 you would like, Ms. Cronk, I will review the chart
3 this evening.

4 THE COMMISSIONER: Well, I wonder,
5 before you do that --

6 MS. CRONK: Q. Well, I don't think
7 that that is necessary, Doctor. My only purpose in
8 asking the question was to, in light of the opinion
9 which you have just expressed that I gathered you
10 formed at the time of the child's death, whether in
11 your view any of the terminal events recorded in the
12 record --

13 THE COMMISSIONER: Remember, he hasn't
14 studied it now. He hasn't looked at it, so, he can't
15 answer the question unless you make him study it.

16 MS. CRONK: Well, I am not asking him
17 to review the record, Mr. Commissioner, and with your
18 indulgence for just a moment. My question was merely
19 going to be whether or not any of the terminal events
20 recorded for the child played a part or formed a basis
21 for you in reaching your opinion as to the cause of
22 his death?

23 THE WITNESS: I think to backtrack just
24 a little bit, Ms. Cronk. I have not reviewed the chart
25 as I have said, but having been specifically interested
in this type of rare cardiac malformation where I don't
believe we have any survivors beyond a few months, that



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influenced me at the time of the catheter study more than almost anything else. So, I would have to review the chart at your pleasure to respond to any other questions.

MS. CRONK: Q. Well, I am not asking you to do that, Doctor, the extent of your involvement is now clear with this child.

A. Right.

Q. Similarly, as I understand it, you had very little if any direct involvement in the care and management of Keven Pacsai during his life?

A. I had nothing to do with Kevin Pacsai.

Q. All right. Indeed, did the death of Kevin Pacsai at the point in time on March 12th, 1981 coincide with the period of your absence from the City which you described a few moments ago?

A. Yes, I had returned that evening, the 12th, which I believe was a Thursday.

Q. Right. And I believe you said you were back on duty on the 13th of March?

A. Correct.

Q. Right. Do you recall at that time, Doctor, being made aware of the death of Keven Pacsai?

A. I can't recall specifically. I know when I came back my desk was terribly crowded with



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correspondence and other patient materials that had backed up from the week I was away. So, I presume we were informed as of the usual work conference but I can't make any specific recollection.

Q. The autopsy of Keven Pacsai, as I understand it, Doctor, was conducted on March 13th, which I take it would have been your first day back at work after your absence?

A. Correct.

Q. Did you attend the gross autopsy of the child?

A. No, I didn't.

Q. Doctor, could I refer you - perhaps the Registrar would be kind enough to provide to you a copy of Exhibit 110.

A. Is that the Pacsai chart?

Q. No, sir, it is not. It is a memorandum prepared by Dr. Fowler dated March 20, 1981 concerning the death of Kevin Pacsai. This memorandum, Dr. Freedom, reports upon the death of Kevin Pacsai and some of the circumstances surrounding his death and concludes on page 2 in the concluding paragraph that:

"Dr. Freedom, Head of the Pathology Section of our Division, has agreed to set up a pathology conference on



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"this patient as soon as the micro-
scopic findings are available and
we will invite the Coroner, Dr.
Tepperman, to attend."

Do you recall, Dr. Freedom, upon your
return to Toronto in learning of Kevin Pacsai's death
of being requested by Dr. Fowler or by Dr. Rowe to
arrange for the holding of a pathology conference to
be directed to the issue of this child's death?

A. No, I do not.

Q. To your recollection, was any
pathology conference on that issue arranged and held?

A. No. I believe that I saw this
memo from Dr. Fowler some time after the events of that
weekend of March 21st and it was my understanding that
the Pacsai youngster as well as the others were under
police investigation.

Q. Had there been a pathology
conference arranged, Doctor, specific to the death of
Kevin Pacsai, would you have expected in the normal
course that you would have participated in those
discussions given your cross appointment?

A. Yes.

Q. Doctor, if we may move then to
the death of Charlon Gardner who, as I understand it,
was admitted to the hospital on the 13th of March and



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died on the 18th of March. As I understand it, you did have some direct involvement in the care of this child?

A. Yes.

Q. Was the patient referred to you in the first instance, Doctor, for consultation?

A. Yes, Charlon was.

Q. And if we turn to page 11 of the record do we see at that page your initial reporting letter to the referring physician concerning the result of your examination on Charlon Gardner?

A. Let me see, I am trying to get some of my notes ready. That was page 11?

Q. Page 11, Doctor.

A. Yes.

Q. And if we turn to the second page of your reporting letter, Doctor, in the summary section, you note that the baby has a very severe form of pulmonary atresia with a ventricular septal defect with non-confluent pulmonary arteries; and you continue:

"At the present time this baby's pulmonary blood flow is entirely ductus dependent and for this reason must continue to receive prostaglandins. The surgical management here is also



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"very difficult. It would be difficult to perform a left sided shunt because this would require cross-clamping his small left pulmonary artery and this would certainly lead to the baby's death."

You then go on to propose that the baby's right chest should be explored and you conclude:

"I plan to discuss it within the next 24 hours with the surgeons and I will get back to you."

I take it, Doctor, from the addendum to your letter at the bottom of page 2 that in fact her case was discussed at the surgical staff conference and the consensus of opinion reached at that meeting was that the overall look for the child was very poor?

A. Correct.

Q. Is that correct?

A. Yes.

Q. And, in addition, you have reported that as a result of the surgical conference discussion that an exploration of her right chest would be undertaken as you had initially proposed would be appropriate?



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A. . Correct.

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Q. . Right. Doctor, as I understand it, you subsequently conducted, following your initial examination of the child, a catheter study on the child. Is that correct?

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A. . I believe, Ms. Cronk, a catheter study was done. I don't believe I did this one.

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Q. . All right. And the results of that catheter study, whether or not you participated in it, formed a part of the report?

A. . Yes.

Q. . To the referring physician,

Dr. Garfield, as set out in your reporting letter of March 16th?

A. . Correct.

Q. . Right. Doctor, if we turn to --

I'm sorry, Doctor. Following the performance of the catheter study on this child, Doctor, did you follow her course while she was on the ward?

A. . Yes. I don't believe again, Ms. Cronk, I was Ward Chief but I do remember again having a specific interest, not just Charlon as my patient, but I had been particularly interested in this very rare unusually lethal situation of non-confluent pulmonary arteries.

Q. . In your experience that was a very



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rare condition and this child suffered from it?

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A. Correct. As a matter of fact, I have just recently reviewed the entire listing of all patients seen since the Heart Unit was established at Sick Children's and I believe we found 12 patients in 40 years.

Q. Doctor, as I understand it, Charlon Gardner died on March 18th at approximately 4:30 a.m.?

A. Yes.

Q. And an autopsy was conducted on the same day. Did you attend the gross autopsy of this child?

A. Yes, I did.

Q. Did you have an opportunity at that time or subsequently to observe her heart?

A. Yes, I did.

Q. As a result of those observations, Doctor, and the knowledge that you had of her clinical and anatomical condition based on your personal examinations of her in the catheter study which had been conducted, did you, following her death, formulate an opinion as to the probable cause of her death?

A. Yes, I felt that this baby died as a result of her severe heart disease with aspects of hypoxia and heart failure.



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Q. And did you subsequently, Doctor, receive or obtain a copy of the preliminary and final autopsy reports on the child?

A. Yes, I did.

Q. Did the findings disclosed in those reports cause you to alter or change in any way the opinion you had previously reached concerning the cause of her death?

A. No. Indeed, it corroborated that there was a clot formed in her pulmonary artery, thrombus, and, again, I was very sad that this youngster died. I had hoped that we might be able to do something for Charlon but with the caveats I set forth in my letter to Dr. Garfield.

Q. Doctor, as I understand it, this child was digitalized following admission at the hospital and maintenance doses of digoxin were administered thereafter?

A. Right.

Q. Until I believe the evening of March 17th, the last dose she received was that evening?

A. Correct.

Q. Does that accord with your understanding?

A. Yes.



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Q. At the time of considering her death and at the time of attending the gross autopsy and observing her heart, Doctor, did you consider at that time whether or not digoxin intoxication had contributed to or afforded an explanation for her death?

A. I think as we have discussed before, there is nothing specific about a way a baby dies with or without digoxin. I felt this baby Charlon Gardner had very severe heart disease and most sadly enough a most rare type of malformation, or just the malformation itself precludes doing something that is often done, that is, a shunt, and I felt that with the heart failure, with the discontinuity between the lung arteries that this is why the baby died.

So, I did not consider digoxin specifically at that time. The baby had a normal dosage for Charlon's weight. Also, we were fortunate, I think from September, 1980, we had had a clinical pharmacist assigned to our floor who oversaw the propriety of drugs and she would often make rounds with us and call our attention if she thought there was any difficulty with drugs; not just digoxin, mind you, antibiotics, diuretics. So, again, Charlon was taking the appropriate dose of digoxin. There was severe disease and I felt that Charlon's death was



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2 a combination of both hypoxia and severe heart
3 failure.

4 Q. Doctor, could I ask you to turn
5 to page 29 of the record?

6 A. Yes.

7 Q. To a letter over your signature
8 addressed to Dr. Garfield dated March 19, 1981?

9 A. Yes.

10 Q. Which I take to be your final
11 reporting letter concerning this child's death?

12 A. Correct.

13 Q. Doctor, I understood you a few
14 moments ago, please correct me if I am wrong, to
15 suggest that in part the child's death was
16 attributable to hypoxia?

17 A. Well, you know, certainly what I
18 just said, I think that there was a combination, and
19 perhaps my letter would have been more helpful, to
20 Dr. Garfield, if I had stated 'It is unlikely that
21 hypoxia was the sole contribution, was certainly a
22 major aspect of heart failure as well'. I think that
23 would have been appropriate.

24 Q. You're referring now, Doctor, to
25 the third paragraph of your letter to Dr. Garfield at
which you indicate you have previously reported in
your letter as to the results at gross autopsy?



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A. Correct.

Q. And you indicate particularly:

"We did not find any source of bleeding or obvious infection and in view of the widely patent left ductus it is unlikely this was a hypoxic death."

A. In itself. I think that as one looked over the chart, and I can't remember Ms. Cronk if at the time I dictated this letter I had the chart, again, I usually try and have it at my desk, that there was certainly a concern about the level of oxygenation in this baby and that's why they were considering a shunt. But there was also heart failure and I think perhaps the letter was not explicit in that sense.

Q. And I take it, Doctor, that in addition to the heart failure itself, you did consider that hypoxia had formed a part in this child's death?

A. Definitely.

Q. All right.

A. Again, the youngster was being considered for a shunt despite all the risks that we had talked about or, excuse me, that I had mentioned in my earlier letter.



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Q. Doctor, are you familiar with
the terminal events sustained by this child?

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A. Yes.

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Q. In your view, Doctor, were any
of the events suffered by her immediately before and
following her cardiac arrest prior to her being
pronounced dead, are any of those events or symptoms
consistent in your view with digoxin intoxication?

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A. Again I find it difficult to, you know, verbalize it.

I think as one looks at babies dying, I don't think there is anything specific about babies dying with digoxin versus no digoxin. I felt this baby had severe heart disease of a rare type. I felt there were contributions from heart failure and hypoxia and I did not consider, you know, digoxin intoxication as a cause of death. I am not sure I have answered your question.

Q. Well, Doctor, I am now in some difficulty again because of your suggestion that there appears to be no difference between the way children die with digoxin or without digoxin.

A. Yes.

Q. In light of our - of your evidence earlier this morning, I take it we can agree, however, that there are some symptoms which are commonly known in the medical profession to be or believed to be directly attributable to the effects of digoxin intoxication or digoxin toxicity.

A. Well, the reality, Miss Cronk, is that a sick baby can have bradycardia, can have vomiting, can have lethargy, can have everything, you know, that we have discussed and not be on



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2 digoxin. So when one hears about a baby who has, you
3 know, these findings, I think obviously the focus of
4 this forum was digoxin responsible for some of these
5 babies.

6 THE COMMISSIONER: No, that is not
7 the question. That wasn't the question you were
8 asked. The question was asked if, if, you have to
9 assume that the baby died of digoxin poisoning,
10 would the symptoms of the death, the manner of the
death be consistent?

11 THE WITNESS: Is that the question?
12 I am lost.

13 THE COMMISSIONER: That is not the
14 way it was put. It may not be a very eloquent way
15 of putting it. I don't think - Dr. Rowe had no
16 trouble with that question and he would say yes it
17 was, so it was consistent with digoxin and it was
consistent with the symptoms, would he not?

18 MR. SCOTT: Mr. Commissioner, it is
19 a difficult --

20 THE COMMISSIONER: Sorry, it is
21 getting close to one o'clock. I wanted to bring this
22 to an end, that is all.

23 MR. SCOTT: Well, it is a difficult
24 and serious point. Dr. Rowe did say it was consistent
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3 with digoxin toxicity, but you will also recall that
4 he said, and it may be with Miss Cronk the effect
5 of this hasn't been absorbed, that the same symptoms
6 were consistent with 14 other methods --

7 THE COMMISSIONER: Yes, I understand
8 that.

9 MR. SCOTT: 14 other methods of
10 death.

11 THE COMMISSIONER: I understand that,
12 yes.

13 MR. SCOTT: Isn't that where the
14 confusion is? Miss Cronk is trying to say that these
15 are more likely to be digoxin deaths because of
16 bradycardia or because of --

17 MS. CRONK: Well, with respect,
18 Mr. Scott, that is not the question I put to
19 Dr. Freedom.

20 THE COMMISSIONER: Can I just put
21 that question then? This is going to be the most
22 leading question and I want you to answer yes to it.

23 THE WITNESS: Yes.

24 THE COMMISSIONER: Well, I think that
25 disposes of that question.

MS. CRONK: Mr. Commissioner, on that
note may we return to Charlon Gardner after lunch?



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THE COMMISSIONER: Yes, I guess we will have to.

MS. CRONK: I thought he had disposed of the question. I am sorry.

THE COMMISSIONER: I think the question was well understood without my having put it.

If you were to know the fact that this child died of an overdose of digoxin you would not be surprised by the symptoms shown by the child at the time of death. Is that correct?

THE WITNESS: That is correct.

THE COMMISSIONER: If you had known if it were a known fact that the child died of the disease that you have depicted you would not be surprised at the symptoms shown by the child at death?

THE WITNESS: That is exactly precise as well, Mr. Commissioner.

THE COMMISSIONER: Mr. Scott would like you to add 12 other diseases.

THE WITNESS: At least 12 others.

THE COMMISSIONER: And that would not surprise you either?

THE WITNESS: Correct.

THE COMMISSIONER: You want to



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continue with this?

MS. CRONK: I am content to leave
it there till after the break, Mr. Commissioner.

THE COMMISSIONER: 2:30? Will that
get you finished by 10 to 4:00?

MS. CRONK: Yes.

THE COMMISSIONER: 2:30.
---Luncheon recess.



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---On resuming at 2:30.

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THE COMMISSIONER: Yes, Miss Cronk?

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MS. CRONK: Thank you, Mr. Commissioner.

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Q. Dr. Freedom, do you recall im-

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mediately prior to the luncheon break a discussion
concerning the terminal events sustained by Charlon
Gardner?

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A. Yes.

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Q. Dr. Freedom, as I believe you

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told me yesterday in evidence, you co-authored together

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with Dr. Richard Rowe and others a book entitled,

12

"The Neonate With Congenital Heart Disease."

13

A. Correct.

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Q. The second edition of which,

I understand, was published in 1981.

15

A. Correct.

16

Q. Doctor, I would like to show

17

you an excerpt from the book, Pages 157 to 162.

18

THE COMMISSIONER: What is the title

19

of the book again?

20

MS. CRONK: "The Neonate With Congenital

21

Heart Disease," second edition, 1981, published by

Doctors Rowe and Freedom.

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THE COMMISSIONER: Exhibit 169.

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3 ---EXHIBIT 169: Extract from the book, "The Neonate
4 With Congenital Heart Disease."

5 MS. CRONK: Mr. Lamek points out
6 written by, not published by.

7 Q. Dr. Freedom, pages 157 to 162
8 that I have just provided to you are an extract from
9 Chapter 10 of the book. The chapter is entitled,
10 "Heart Failure in the Newborn."

11 Do you recognize the extract as being
12 part of the book which you co-authored, Chapter 10?

13 A. Yes.

14 Q. I ask you to turn, Doctor,
15 if you would to Page 158 of the extract.

16 A. Yes.

17 Q. And see that there is a dis-
18 cussion under the sub-heading of Digitalization,
19 and discussion concerning Digoxin under sub-heading
20 of that name which begins on the bottom of page 158.

21 A. Right.

22 Q. And if we continue over,
23 Doctor, to page 159, the subject of digoxin toxicity
24 is under discussion and I direct your attention towards
25 the bottom of the first full paragraph with the
language beginning, "It is rather widely believed."



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A. Let me see. Yes, all right.

Q. Do you have that, Doctor?

A. Yes.

Q. "It is rather widely believed that gastrointestinal manifestations are unusual in young infants, but vomiting is quite common and is found in about one half of those who become toxic, even in the newborn period."

Stopping there for a moment, Doctor, as I understand it the discussion in this paragraph and continuing over to Page 160 in part addresses itself to the issue of symptoms of digoxin toxicity. Am I correct?

A. Yes.

Q. And the first one to which attention is drawn is the passage which I have just referred you and that is that vomiting is a symptom of digoxin toxicity in infants, and remembering this book and indeed, therefore, this passage refers to neonates, is a rather common symptom of digoxin toxicity. Is that correct, Doctor?

A. Correct.

Q. Continuing with the passage, "The anorexia of adults, which can be related to elevated serum digoxin levels, may be portrayed in these infants by



disinterest in feeding."

Is that a symptom of a different kind, Doctor, or really just an extension of the first?

A. I think it is an extension of the first, Miss Cronk.

Q. Continuing to the third symptom:

"Neurologic signs have not been appreciated as a manifestation of digitalis toxicity in babies, and when present are difficult to ascribe to the toxic effect of the drug because so many other causes for neurologic instability exist at this age.

Dysrhythmias are common and are present in as many as 70 percent of infants with digitalis toxicity."

I take it, Doctor, that dysrhythmias of the kind described there in the article are a second symptom recognized to be symptomatic of digoxin toxicity?

A. Well, I would say as opposed to being a symptom because many babies don't know I would presume they are having dysrhythmia. It is a finding that one may associate with digoxin toxicity.



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3 Q. Well, it is something that
4 a physician on observation of a patient would consider
5 a symptom; isn't that correct, Doctor?

6 A. No, I would consider it to be a
7 finding.

8 Q. All right.

9 A. Because a patient won't say I
10 am having a dysrhythmia. You would find that on evalua-
11 tion of the patient.

12 Q. Having found it, would that
13 alert a physician to the possibility of digoxin intoxica-
14 tion?

15 A. Or other causes.

16 THE COMMISSIONER: Are symptoms only
17 subjective?

18 THE WITNESS: I think so. At least my
19 understanding is they are something that is related to
20 you either by direct verbalization or inspection of the
21 patient.

22 Q. So that we understand each
23 other, Doctor, for the balance of this discussion when
24 I refer to symptoms I am referring to findings which
25 would be observable either by electronic means or
visually by a physician upon examination of a
patient.



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3 A. Right. I would agree with
4 that.

5 Q. Continuing, then, Doctor:
6 "There is no pathognomonic rhythm
7 disorder in digitalis toxicity, and
8 almost any type of disturbance may be
9 found. Rhythms that combine increased
10 automaticity of ectopic pacemakers with
11 impaired conduction are in most series
12 strongly suggestive of a digitalis back-
13 ground. P-R interval prolongation
14 is not a sign of toxicity, only of
15 digitalis effect, but supraventricular
16 tachycardias, atrioventricular blocks
17 and premature contractions which occur
18 in roughly equal numbers certainly are."
19 I gather that those items, Doctor, when found by a
20 physician on examination of a patient would be taken
21 to be, in my language, symptomatic or indicative of
22 digoxin toxicity.

23 THE COMMISSIONER: "Consistent with"
24 I think the doctor would prefer.

25 MS. CRONK: Q. Consistent with,
Doctor?

A. Yes.



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Q. Continuing, Doctor:

"Ventricular tachycardias are less common in the young, and bradycardia and marked atrioventricular block commonly arise with massive overdosage."

Again, bradycardia and marked atrioventricular block are stated to be commonly a result of massive overdose and I take it you would agree that those manifestations would be consistent with digitalis toxicity?

A. They could be consistent with other biochemical abnormalities as well.

Q. All right. And with that caveat, Doctor, can we agree that when a patient manifests or demonstrates a number of these symptoms (again, my language) or a number of these findings are made by the examining physician in combination that would prompt the examining physician to consider the possibility of digoxin toxicity in that patient?

A. Yes, I would think so, with again the caveat that children can die and certainly there is evidence in the literature that children not on digoxin will die in the same way, either bradycardia or a ventricular dysrhythmia.



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3 Q. I think I understand your evidence,
4 Doctor, that these findings are not necessarily conclu-
5 sive of digoxin toxicity, but my question to you is
6 in the presence of such findings in one or more or
7 a combination it is one of the possibilities that the
8 examining physician would be prudent to consider.

9 MR. SCOTT: Well, Mr. Commissioner, I
10 don't want to interrupt, but can't we leave it where
11 it is, that all the medical evidence so far has been
12 that these symptoms, findings, are consistent with but not
13 necessarily indicative of. That is the evidence that
14 Mr. Lamek obtained.

15 Are we going to go around or can we
16 all agree that that is what it is and get on?

17 THE COMMISSIONER: I think we can get
18 on, whether we agree or not. In any event because ---

19 MS. CRONK: The point is made.

20 THE COMMISSIONER: --- I think we
21 dealt with that.

22 MS. CRONK: All right, thank you.

23 Q. Doctor, if you could turn then
24 to the case of Allana Miller. I understand that you
25 were involved with the child's treatment and medical
care as early as October of 1980 at the time of her
first hospitalization?



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A. Yes, that is correct.

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Q. I understand that, Doctor, although she had been previously hospitalized, the date of her last admission was March 19th, 1981 and she subsequently died in the hospital on March 21st.

7

A. Correct.

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Q. And on the occasion of her prior admission in October of 1980, as I understand it, you had performed a cardiac catheter procedure on this child?

11

A. Correct.

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Q. And if we go to Page 6 of the record, do we find there, Doctor, your reporting letter concerning the outcome of the catheter procedure which you conducted?

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A. Yes.

17

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Q. Your conclusions as stated in the reporting letter, as I understand them, Dr. Freedom, and I am referring to the Paragraph 3:

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"In summary, then, the basic abnormality of Alana's heart is a common atrium and an admixture lesion of her pulmonary and systemic venous blood. This is usually associated with a cleft mitral valve and can be considered a form



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3 of endocardial cushion defect. At
4 the present time this youngster is not
5 in heart failure and is being discharged
6 on digoxin and diuretics."

7 You continue,

8 "There is no doubt that this youngster
9 will require surgery for this malforma-
10 tion, but hopefully we could postpone
11 it for another year or two."

12 And then you advance a caution, should she experience
13 recurrent chest infections, particular form of medica-
14 tions and treatment regime should be pursued.

15 Is that correct, Doctor?

16 A. Correct.

17 Q. Following that reporting letter
18 on the occasion of that catheter study, Doctor, as
19 I understand it you examined the child again on
20 December 17th, 1980?

21 A. Yes.

22 Q. And if we could turn over the
23 page to Page 8 of the record we will find there your
24 reporting letter, again to the referring physician,
25 dealing with your observations and your diagnosis
based on that followup consultation on the 17th of
December.



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A. Correct.

O. If we turn to the second page of that reporting letter, Doctor, again in the summary section, you indicate,

"In summary, this infant is progressing satisfactorily, although she remains small, and she had the clinical findings of some degree of pulmonary artery hypertension. We certainly have ruled out any shunting at ventricular or great artery level, and I would think that all the findings are explained in large part by a large left to right shunt at atrial level."

You continue,

"I think we should continue Allana in the meantime on digoxin which I did increase today to 0.6 ccs twice a day by mouth and aldactazide 10 mgs twice a day by mouth. I have suggested to the family that I reassess Allana in about three months."

And again you confirm your previous prognosis:

"There is certainly no doubt at all that this infant will require surgery and the



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only question is the timing of it."
I take it, Doctor, that as at mid-December, 1980, the
child was in your view progressing satisfactorily,
although you continued to recognize that surgical
intervention was going to be necessary.

A. Yes. As I look back on this
letter, I think I am winding my way with Dr. Shaw to
the fact I think this child would not go the year or
two that I had hoped.

I said that she is small. She
does have pulmonary artery hypotension, and although
she was clinically getting along, I was a little more
concerned about her in that letter.

Q. Now, Doctor, if we turn over
the page to Page 10 of the record we find a subsequent
reporting letter dated March 4, 1981, again from your-
self to the referring physician, Dr. Shaw, and I take
it that that reporting letter was a result of a further
consultation and examination which took place on March
3rd?

A. That is correct.

Q. And on the first page and the
second full paragraph, Doctor, if I could draw your
attention to your observations as recorded there,
you indicate,



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3 "Since I last assessed her in December,
4 the child had been in the hospital on
5 several occasions back in Kitchener
6 with chest infections and bronchiolitis,
7 and in addition the baby has failed to
8 gain any weight. Continues to perspire
9 excessively, has a nearly constant
10 expiratory grunt, and remains breath-
11 less despite digoxin and aldactazide."

12 I take it the digoxin treatment had continued from the
13 time of your last followup with the child in December
14 through to the timing of your visit on March 3rd.

15 A. That is correct.

16 Q. If we turn over to the next
17 page of your reporting letter, again the summary section,
18 Doctor, you indicate,

19 "...this youngster really is not
20 progressing satisfactorily at all. In-
21 deed, she has gained virtually no weight
22 in the past three months, has had multiple
23 hospital admissions, I understand, per-
24 sists with a very large heart despite
25 intensive medical therapy. I am really
a bit surprised that in the absence of
significant ventricular septal



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3 defect, she remains in such significant
4 degrees of heart failure."

5 And then you continue,

6 "...because of this child's failure to
7 respond to medical therapy that we
8 should put her forward for early surgical
9 intervention."

10 Stopping there for a moment, Doctor, I take it the
11 view that you felt you were approaching in December has
12 now been confirmed, that surgery would be required at
13 a far advanced date than you had originally anticipated.

14 A. That is true.

15 Q. And continuing to the conclusion
16 of your letter,

17 "For the meantime, we should continue
18 her on digoxin .6 ccs twice a day by
19 mouth and aldactazide 12.5 mgs twice a
20 day by mouth. I would anticipate
21 Allana would be admitted within the next
22 four to six weeks for the surgery and
23 the only other question that remains to
24 be discussed at the surgical conference is
25 whether or not another catheter need be
performed just prior to the surgery."

That would be a repeat catheter study following upon



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the one that you did in October, 1980?

A. Correct.

Q. And again, Doctor, if we turn to the immediately next page, Page 12 of the record, we see another reporting letter, I take it by you to Dr. Shaw, the referring physician once again, and you indicate in that letter that Allana's case had been discussed at the medical surgical staff conference held on the 9th of March, 1981, and there was unanimity of opinion that early surgery should be proceeded with and that the youngster should be scheduled for surgery later that month.

A. Correct.

Q. And you further indicate that the conclusion of the conference when her case was discussed that a further catheter procedure would not be necessary?

A. Correct.

Q. Now, Doctor, I take it from my review of the record that following the date of your reporting letter --

MR. PERCIVAL: I'm sorry, Ms. Cronk, what was the date, the date of the report?

MS. CRONK: March 12th, 1981.

O. I take it, Doctor, that following



1
2 your report to Dr. Shaw on March 12th the child indeed
3 was admitted on March 19th?

4 A. That's correct.

5 Q. Tell me, Doctor, from your
6 knowledge of this child's condition was there any
7 event on the 19th of March or in the day or two preceding
8 that which precipitated the entry to the hospital at that
9 stage, bearing in mind that your earlier suggestion to
10 Dr. Shaw was that it would be four to six weeks hence?

11 A. Yes. I believe it was on the
12 Thursday prior to this youngster's death that Dr.
13 Shaw called me late one afternoon and indicated to me
14 that Allana was having multiple dysrhythmias and
15 worsening of her congestive heart failure, and he said
16 he felt more comfortable because of the rhythm disturbance
if the baby was in Toronto.

17 Q. And in consequence of that I
18 gather she was admitted on the 19th of March?

19 A. Yes. I was not on call that
20 evening, but I touched bases with the admitting
21 fellow -- excuse me, the fellow on the floor that
22 evening, and the resident staff. I made arrangements
for her to be admitted.

23 Q. Right. Doctor, on that date, the
24 date of her admission, did you in fact examine the child?
25



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A. No.

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Q. Do you recall having any dis-

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cussion with her parents at the time of her admission

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on the 19th?

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A. I can't remember precisely,
I don't believe so. I think she came in in the
evening after I had gone home.

MS. CRONK: Excuse me, Doctor,
Mr. Commissioner, with your indulgence.

Q. Doctor, I apologize I can't
immediately put my hand on the extract from the
preliminary hearing.

MR. SCOTT: I am sorry to interrupt,
but the last question presents a problem, I should
collect all these and deal with them at one time. Is
Commission Counsel going to suggest that there was a
conversation with the parents? Because, if they are,
it seems to me in fairness to the doctor they should
say when that conversation occurred, with who it was
and what was said.

THE COMMISSIONER: Yes, I agree with
that, but I thought, I didn't really think you had
that plot in mind, did you?

MS. CRONK: Well, Mr. Commissioner,
as it happens I had intended to do precisely what
Mr. Scott suggested on the basis of Dr. Freedom's
evidence at the preliminary hearing, and the
regrettable fumbling was for the preliminary hearing
transcript which I can't find at the moment.



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If I can assist Mr. Scott in ---

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THE COMMISSIONER: Well, I think

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though that probably Mr. Scott's point is before you

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even put the preliminary hearing to him you should

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put the circumstances of it, and say, did he remember

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that occasion.

9

MR. SCOTT: While we were at it just

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so I will be on the record. During the examination

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of Dr. Rowe and - I shouldn't say Dr. Rowe, of

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Dr. Freedom and Dr. Fowler, preceding this attendance

at the Commission, the Commission Counsel have from

time to time ---

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THE COMMISSIONER: You are talking

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about the private meetings?

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MR. SCOTT: Yes. It is not that

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private, there have been others there, but they have

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from time to time suggested, they have asked them,

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and I won't say in a menacing fashion, but in a knowing

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fashion whether they were alerted by nurses, or others

20

in the Hospital about the risk of digoxin deaths in

the summer of 1980 and in the autumn and so on. The

21

doctors have answered their questions honestly.

22

The same exchange occurred here

23

yesterday at page, I don't think you have to look it

24

up, but it is page 5289 and following, where

25



1
2 Miss Cronk more than once asked, as at the bottom
3 of the page:

4 "Q. Do you recall, Dr. Freedom,
5 any member of the nursing staff raising
6 with you, or drawing your attention to,
7 the increased number of deaths that
8 appeared to have been occurring in
9 July and August on these wards?"

10 And then he gives his answer which is about the head
11 nurse meeting with Dr. Rowe. Then at line 14:

12 "Q. Prior to that meeting, Doctor,
13 had any member of the nursing staff
14 approached you personally to discuss
15 or raise with you the issue of these
16 increasing deaths?"

17 And he gives his answer:

18 "I don't recollect..."

19 Now, I have no objection to those
20 questions if they are simply open-ended requests
21 for the doctor's recollection and information, but
22 I am sure my friends are conscious of the rules
23 applied in courts which I think might in fairness be
24 applied here.

25 THE COMMISSIONER: It might or might
not be applied here. If it isn't applied here I will



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2 give a great deal less weight to the apparent
3 contradiction.

4 MR. SCOTT: Well, further than that,
5 it seems to me that if my friend either in these
6 pre-meetings, or at this Inquiry, has information of
7 such conversations it should be put to the witness.

8 THE COMMISSIONER: Yes, obviously
9 I can't control pre-meetings.

10 MR. SCOTT: No.

11 THE COMMISSIONER: But I think,
12 Miss Cronk, whatever you want, Mr. Lamek seems to want
13 to take over on this.

14 MR. LAMEK: Yes, if I may.

15 MR. SCOTT: That is just my luck.

16 MR. LAMEK: Mr. Commissioner, let
17 me assure Mr. Scott, through you, that neither
18 Miss Cronk or I need to be reminded of the rule that
19 applies with respect to fairness.

20 Mr. Scott will recall that on the
21 occasions that I have interviewed Dr. Rowe, and I
22 have had information which he did not have, as for
23 example extracts from communications books, I have
24 provided them to him and I have given him an
25 opportunity to consider and read them. I have no
intention, and I assure you neither does Miss Cronk



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2 of being unfair in the slightest way to any of these
3 witnesses.

4 Mr. Scott may take it that if there is
5 no contrary version to the witness' evidence put to
6 him, either when he is in the box, or in the course of
7 a preliminary meeting for preparation of his evidence,
8 that no such information is available to the
9 Commission Counsel. Let me set his mind at rest
10 through you, sir.

11 MR. SCOTT: I am entirely grateful
12 with that. I am getting paranoid the longer I sit
13 here.

14 MR. LAMEK: Yes.

15 MR. SCOTT: And that is what it is.
16 There is no evidence that anybody has been unfair,
17 but I did want to remind the Commission if I could ---

18 MR. PERCIVAL: My friend has a short
19 memory, Mr. Commissioner.

20 MR. SCOTT: Well, I wasn't talking
21 about Mr. Percival, but more later on that score.

22 Speaking of Mr. Lamek and Miss Cronk
23 I didn't intend to suggest any unfairness but I am
24 glad to have it affirmed that they understand the
25 principles as I thought they did.

THE COMMISSIONER: Yes, all right.



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Now, Miss Cronk.

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MS. CRONK: Q. Dr. Freedom, ---

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THE COMMISSIONER: We won't hold

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these interruptions against you if you promise to

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finish by 10 minutes to 4:00.

7

MS. CRONK: I am grateful for that,

8

Mr. Commissioner, but nonetheless I will keep my eye
on the clock.

9

Q. Dr. Freedom, I am in some

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difficulty because I do not have with me, I thought

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I did, the volume of your evidence from the preliminary

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hearing. Do you have it with you, sir?

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A. I have been searching for that,

14

Miss Cronk, during this interesting exchange and I
can't find it.

15

I believe my own recollection is I

16

had spoken to the family on the Friday evening, the

17

evening before the youngster's death.

18

THE COMMISSIONER: The 21st was a

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Saturday, the Friday evening would be the 20th.

20

THE WITNESS: Correct. My own

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recollection, Mr. Commissioner, was I had spoken to

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the family that evening, the 20th, and not the evening
of admission.

23

MS. CRONK: Q. Dr. Freedom, you may

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2 well have resolved my confusion and I may simply have
3 confused the two dates. The evidence to which I
4 refer you is found at Volume, I believe it is 21,
5 at page 24 and the question is put to you with
6 respect to Allana Miller:

7 "Q. You saw her Friday all right,
8 Friday, March the 20th you saw the
9 baby.

10 A. Yes.

11 Q. All right. When did you see
12 her then?

13 A. I saw her on Friday morning,
14 the morning after admission and I saw
15 the family Mr. and Mrs. Miller and the
16 baby on Friday evening about 6:30 or
17 7 o'clock."

18 A. That was my recollection,
19 Miss Cronk.

20 Q. Dr. Freedom, I apologize, I
21 thought it referred to the 19th.

22 I take it then that on two occasions,
23 on the Friday you saw the child in the morning, and
24 you saw the child and spoke to her parents later in
25 the evening.

A. Yes, that is true.



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3 Q. Can you tell me what your
4 prognosis was on the basis of the child's condition
5 on the evening of the 20th when you observed her?

6 A. Well, firstly, the baby had
7 not done well over the months December to March
8 and I was certainly concerned about this baby. I
9 was also very concerned about the rhythm disturbances
10 that she was having. Taken in isolation these
11 rhythm disturbances are not invariably benign. I had
12 been particularly interested over the years in children
13 who have this peculiar venous anatomy that she had
14 with so-called azygous continuation of the inferior
15 cava. There has been quite a bit of literature that
16 these children were prone to develop heart block,
17 and this is in the absence of digoxin, because their
18 electrical system so to speak is not formed like a
19 normal baby.

20 So first of all I had a concern when
21 Dr. Shaw called me about what was going on. When I
22 saw the baby twice on Friday I thought that by Friday
23 evening the baby looked more comfortable. Certainly
24 when I saw the youngster earlier on Friday morning,
25 excuse me, earlier Friday morning, the child was
tugging and showed quite a bit of respiratory distress.
It was still having very chaotic rhythm on cardiogram.



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3 When I saw the baby Friday evening with the family
4 I think, if I remember correctly, Mr. and Mrs. Miller
5 were there at bedside, I indicated to them I was
6 pleased and she seemed to have shown some progress
7 over the day but that I was still so concerned about
8 her that I was not going to have her discharged before
9 the surgical date, which I believed was 10 days or
10 two weeks down the road. I didn't think the baby
11 would do well at home and that I was going to keep
12 her in the Hospital and try and advance the surgical
13 date, get a cancellation from someone the following
14 week.

15 Q. Doctor, on the day of admission,
16 the day before, on the 19th when Allana Miller came
17 into the Hospital.

18 A. Yes.

19 Q. Was the digoxin therapy that
20 you previously recommended continued at that stage
21 on the 19th?

22 A. No. When I got the phone call,
23 Miss Cronk, from Dr. Shaw about the rhythm distur-
24 bance, when I called the resident or my fellow on call
25 and mentioned to them that Allana was being admitted,
I suggested that the digoxin be held. Or at least
the level be drawn and probably should be held to find



1
2 out what that level was.

3 Q. Turning to page 87 of the
4 record, the biochemistry report from the lab that
5 appears there, we see that a sample was taken, I'm
6 sorry, Doctor, do you have that?

7 A. Yes, I do, thank you.

8 Q. We see that a sample was
9 taken on the 19th of March, no time is indicated and
10 that it resulted in a level of .6.

11 A. That is correct.

12 Q. Is that the level which to
13 your knowledge was the result of the ordering for a
14 sample you had made on the 19th?

15 A. I seem to recollect, Miss Cronk,
16 I have given previous testimony using the number .9.
17 Now, that could just be my memory, but certainly it
18 was a low level.

19 Q. Now, fairly, Doctor, I have
20 been through the medical record and if there was
21 a .9 nanogram level on the 19th of March I am not
22 aware of it.

23 A. No, I am sure that was
24 just my misinterpretation, but I knew it was a
25 low level.

Q. So a level was ordered, and



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I believe you said digoxin was held to that purpose
on the 19th?

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A. Correct.

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Q. At the time you saw the child
on the 20th had digoxin therapy been reinstituted at
that point?

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A. I remember going through the
corridor up on the 4th floor during Friday, and one
of the residents happen to ask me what shall we do
about the digoxin. I can't remember the time frame
whether we had the digoxin level back. I remember
saying, why don't we hold it, the baby seems to be
settling down. So my last recollection, before I
found that she had died was that I had said, let's
hold the digoxin one more day, one more dose.

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Q. That was I believe you said on
the ---

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A. On the 20th,

Q. On the 20th, right. Do you
recall when that discussion took place, Doctor?

A. Some time on Friday, I just
can't remember the exact time.

Q. And if we turn, Doctor, to
page 43 of the record, the portion of the doctor's
orders, we see that at approximately 3:00 p.m. on the



1
2 20th, the Friday, digoxin was ordered and a maintenance
3 dosage of .32 milligrams.

4 A. Correct.

5 Q. And if we turn to page 38 of
6 the record, Doctor, extract from the medication and
7 treatment, treatment records, we see that digoxin
8 was administered at 9:00 p.m. on the 20th of March,
9 and the notation appears to be Susan Nelles.

10 A. Right.

11 Q. After your visits and discussion,
12 visit with the child and discussion with the parents
13 in the evening of the 20th as you have described it,
14 were you on duty later that evening, or did you have
15 occasion to see Allana Miller again prior to her
16 death?

17 A. No, no, I did not. As a matter
18 of fact, Miss Cronk, the sequence of the medications
19 that you just pointed out were actually pointed out
20 to me by Mr. Austen Cooper at the preliminary session,
21 where I had given evidence that I ^{had} suggested it to be
22 held, and yet it was clear enough that it had not
23 been held.

24 Q. Doctor, at the time of your
25 discussion with the resident on the 20th, did you
order the digoxin be held and not administered, or



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2 was that I believe as you have said, at least the
3 language you used was a recommendation that it might
4 not be necessary?

5 A. Again, Miss Cronk, I wasn't
6 the ward chief in March, it was Dr. Fowler, and I
7 believe - I can't reconstruct the entire conversation,
8 but it was my understanding that this patient, the
9 resident asked me what to do. I thought the baby
10 had settled down and I would have suggested holding
11 it, I think it is more appropriate, however, as
12 Dr. Fowler was the ward chief and I keep reminding
13 our residents even though the patient was referred
14 to me when the ward chief is chief, he will dictate
15 the therapy.

16 Q. Is it your understanding that
17 was the basis upon which digoxin was ordered at
18 3:00 p.m. on the Saturday?

19 A. Yes.

20 Q. And continuing on the same
21 page, Doctor, page 43 from the Doctor's orders, we
22 see on the 21st of March at approximately 2:30 a.m.
23 an order is entered for the holding of digoxin?

24 A. Yes, I see that.

25 Q. Doctor, I take it from what you
have said that you were not present during the arrest



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or the resuscitation efforts for Allana Miller.

A. That is correct.

Q. Were you contacted after
her death?

A. Yes.

Q. And told of her death?

A. Yes. Actually I was called
early that Saturday morning at home.

Q. Are you familiar with the
terminal events that were events that were sustained
by the child, Doctor?

A. Yes.

Q. Were you present at the gross
autopsy? I understand the autopsy was conducted on
the 21st of March.

A. Yes, I did see that.

Q. And you examined her heart at
that time?

A. Correct.

Q. The record contains, Dr. Freedom,
a further digoxin level reading on a biochemistry
computer record, if you turn to page 70, it is the
sample taken on the 21st of March, 1981, no time is
indicated in the biochemistry report, and the level
recorded is 78 nanograms per millilitre.



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2 Can you help me, Doctor, as to when
3 you became aware of that digoxin level?

4 A. I believe it was Saturday,
5 late Saturday evening, the 21st.

6 Q. And is it your understanding,
7 Doctor, that is the postmortem digoxin reading on
8 Allana Miller?

9 A. Yes.

10 Q. Do you know, Doctor, who
11 ordered that level to be taken?

12 A. No, I do not.

13 Q. I take it then, Doctor, that
14 you learned of that level later on the evening of
15 the day of her death, is that what you said?

16 A. Yes, she died early Saturday
17 morning and I learned late that evening.

18 Q. And I take it then you were
19 not aware of the level at the time you attended the
20 gross autopsy?

21 A. No, that was in the morning.
22 I did two catheters on Saturday, one of whom was
23 Justin Cook. If I remember correctly I saw Allana
24 Miller's autopsy right before or right after one of
25 the catheter studies.

Q. And prior to learning of that



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3 postmortem digoxin level, Doctor, at the time that
4 you participated or observed the gross autopsy and
5 examined the child's heart, based on those observations
6 and your knowledge of her clinical condition, did
7 you at that stage formulate an opinion as to her
likely cause of death?

8 A. Yes, I felt although she had
9 looked improved when I saw her some seven or eight
10 hours before her death she still had very severe
11 heart disease, an underlying dysrhythmia and
12 a very poor weight gain. I felt that seeing the huge
13 hole in her heart and the congested lungs that this
would explain her death, it did explain her death.

14 Q. Were there any factors recorded
15 in the medical record of the child, or any terminal
16 events that were drawn to your attention upon which
17 you in part or in whole based that opinion, Doctor?

18 A. No. Again I think it was
19 sort of the entire perception of little Allana Miller,
20 seeing she had gotten sicker over the months and not
21 gained weight and had a very big heart, and the
22 autopsy table seeing a very much enlarged heart..
23 The virtual common atrium, the lack of partition and
the congested lungs.

24 Q. Doctor, was there any discussion
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3 on the 19th when Allana Miller was admitted to the
4 Hospital as to the merits, or lack thereof of moving
5 her surgery date up so that surgery occurred shortly
6 after her admission, or within the next several days
rather than 10 or 12 days hence?

7 A. No, I don't believe so. Again
8 she came in on Thursday evening, I saw her on Friday
9 and I think the feeling of Dr. Fowler and the ward
10 staff is that hopefully she would hang in there for
11 the next week to be treated with vigorous diuretics
and would actually be in better shape for surgery.

12 Q. Doctor, after you were made
13 aware of the postmortem digoxin level which was
14 obtained on Allana Miller, did that influence the
15 opinion that you had earlier on that day formulated
16 as to the likely cause of her death?

17 A. Yes, it did. I was very
18 concerned because here we had a very low level, you
19 know, again I remember a .9 and now we had a level,
20 and I can't remember, Miss Cronk, if I was told the
21 level of 72 or 78, just that it was sky high. I said
22 to myself, "My God, how can she go from very low to
very high, I wonder if there is murder".

23 Q. Was that the first time,
24 Doctor, that the possibility of a deliberate overdose
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or intentional overdose of digoxin being administered
to patients on the cardiology wards occur to you?

A. Yes.

Q. And did you form that view
on the basis of the digoxin level and the height of
the digoxin level as it was described to you that
evening on the 21st?

A. Not just level per se, but the
fact that again I had known the level was low that
afternoon. I had gone home thinking that they were
still going to hold the digoxin, and therefore how
does one explain a very high level that way.



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Q. Doctor, we know that Allana

Miller had been treated with digoxin for some
considerable time prior to admission to the Hospital.

A. Correct.

Q. And on the 19th it was held, as
we have seen, in order that a level could be obtained,
on the 19th on the day of her admission insofar as
you are aware were there then any manifestations in
her condition in a clinical sense or any symptoms
which you felt to then be consistent with possible
digoxin toxicity?

A. No.

Q. All right. And similarly,
Doctor, when you observed and examined the child in
the evening of the 20th when you spoke to the parents,
was there at that stage, before you left the Hospital,
any physical manifestation in the clinical conditions
of the child which suggested to you or which were in
your view consistent with digoxin toxicity?

A. Well, when I looked at her in
her room she was still on the monitor and she was
still having a chaotic rhythm and if I had not seen
or had not appreciated the fact that her digoxin
level, which had been recorded earlier, was low, I
would still have wondered if there had been the
question of digoxin intoxication.



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So, I guess as best as I can reconstruct the events, when I left her on Saturday - excuse me, Friday evening, I was not concerned that digoxin intoxication was a cause of her dysrhythmia.

Q Doctor, you have indicated that when you did learn of the postmortem digoxin level it influenced your opinion earlier formed that day as to the likely cause of her death. You have indicated further that that was the first time that you considered or entertained the possibility of some intentional administration of an overdose of digoxin?

A Right.

Q Did your concern or your impression at that time extend only to Allana Miller or were you concerned at that time with respect to any of the deaths which had preceded hers?

A Well, I think that evening again in the discussion with the fellow, you know, he was the one who told me there was a high level. He mentioned then Pacsai and again in the same context Estrella and I wondered to myself that evening over the last nine months, preceding nine months, but it was Saturday evening.

Q All right. So that in your own mind, Doctor, at that point in examining or



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considering the death and the circumstances of death of Allana Miller, I take it that digoxin toxicity by way of an intentional overdose was something that you considered?

A. Yes. I think I felt it was either intentional or inadvertent but I would consider it because this was the first case where I remembered that we had had a low level and then a sky high level.

Q. Dr. Freedom, Dr. Rowe in his evidence testified, recorded at Volume 18, page 3233 with respect to the death of Allana Miller and the discovery by him of the postmortem digoxin levels:

"Q. Doctor, did you not ask the question of yourself, did you say how did the child get that digoxin?

"A. Yes.

"Q. And how did you answer it for your own purposes in your own mind?

"A. I didn't know how the child got that, it didn't seem to me likely that that could be except by it was an obvious overdose.

"Q. Yes.

"A. It seemed to me it was an obvious



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"overdose at the time and the overdose could be through a mistake or intentionally and I think we understood that those matters were being investigated very promptly."

Continuing on further down the page:

"Q. Did it appear to you likely that the overdose which you inferred had been administered, did it appear to you likely that that overdose had been administered accidentally?

"A. I thought it was unlikely.

"Q. And since that time at any time to the present have you had any reason to change that view, the question that it was unlikely that it was?

"A. I haven't changed --- "

And then an exchange between the Commissioner and Mr. Lamek.

"A. Well, I have had some other thoughts about that. I think those are matters that have emerged a long time since over the question of what happens to digoxin in tissue after death and when a patient has been resuscitated.



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"Q. If in fact it means as you originally inferred an overdose, have you changed your view that such an overdose is unlikely to have been administered accidentally?

"A. I can't exclude that possibility but I thought that was unlikely.

"Q. You thought that was unlikely?

"A. Yes."

Is that an opinion which you share?

A. Yes.

Q. Dr. Freedom, we have heard evidence that the death of Allana Miller was reported to the coroner on the evening of September 21st, the Saturday.

A. March.

Q. That's right, March 21st, sorry. Can you tell me, sir, did you participate in the decision to report the death to the coroner?

A. No, I did not.

Q. Do you have any knowledge of the circumstances under which it was reported to the coroner or as to any discussions which may have obtained as to the necessity for reporting the case to the coroner?



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A. It was my understanding that when the digoxin level came back that evening that's what led to the reporting to the coroner's office.

Q All right. Doctor, there was a meeting we have heard held on the afternoon of March 21st at the coroner's office amongst representatives of the Hospital and representatives of the Coroner's Office and the Metropolitan Toronto Police Force. Did you attend that meeting?

A. No, I did not.

Q Are you aware, Doctor, or do you have any knowledge as to whether or not the death of Allana Miller was discussed at that meeting on the 21st of March at the coroner's office?

THE COMMISSIONER: Well, I think not. He says he wasn't there. He could only have heard from someone else. However, it is easier to have the answer than to go on with it but I wanted to just tell you I would pay, with great respect, absolutely no attention to what he says somebody may or may not have discussed. If the person who was there says what was discussed ...

MS. CRONK: Well, I am in your hands, Doctor.

THE WITNESS: I have no information.



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THE COMMISSIONER: That's very helpful
of you, Doctor, thank you.

MS. CRONK: Q Doctor, turning then
to the death of Justin Cook. As I understand it he
was admitted on March 20th.

A. Yes.

Q Was seen by Dr. Fowler who was
then, you have indicated, the ward chief for the month
of March?

A. Yes, and I believe Dr. Fowler
was also on call for that weekend and I was backing
him up on the catheter laboratory.

Q All right. And he died on
March 22nd, as I understand it?

A. Correct.

Q Doctor, based on my review of
the record, it is my understanding, and I believe you
have indicated earlier this afternoon that you
performed the catheter procedure on this child on the
21st of March, Saturday?

A. Yes, that's correct.

Q Were you on duty for that purpose
on the 21st of March, Doctor, or were you called in
to conduct the catheter?

A. Again, Miss Cronk, we have a



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system in the Hospital, at least in the Division of Cardiology, since Dr. Fowler and Dr. Vera Rose do not do catheter procedures that any evening or any weekend one of those two physicians is on call one of us will back them up for procedures. So, I was not specifically in the Hospital but they had called me that morning and told me there were at least two catheters to be done Saturday. So, I came in for that reason.

Q. Right. And if we turn, Doctor, to page 69 of the medical record, which is Exhibit 116, do we find there your report to the results of the catheter study that was conducted?

A. Correct.

Q. Once again, Doctor, reading under the section entitled Final Diagnosis, do I correctly take it that the predominant findings following the catheter procedure were dextrocardia with atrial situs solitus and tricuspid atresia?

A. Yes. I think in youngsters with complex heart problems it is often difficult to give a priority to several potentially lethal conditions. This baby, in Justin, I think Nos. 2, 3, 4 and 5 can probably be put on the same line.

Q. Doctor, following the conduct of



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the catheter study, did you have any further direct involvement in the care and management of Justin Cook prior to his death?

A. No.

Q. Did you subsequently attend the autopsy that was conducted on March 22nd following Justin Cook's death?

A. Yes, I did.

Q. Did you have an opportunity to observe his heart at that time?

A. Yes.

Q. Are you familiar as well, Doctor, with the terminal events sustained by this child?

A. Yes.

Q. You have had an opportunity then I take it to review the records?

A. Yes.

Q. Did you do so in March, shortly after his death, or do you recall?

A. I can't recall specifically. I have looked at a number of these charts with Dr. Rowe over the past two and a half years but certainly in getting ready for this Commission I reviewed it.

Q. All right. At the time of attending at the gross autopsy, Doctor, did you have



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any information as to any digoxin levels which had
been obtained in respect of Justin Cook?

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A. No.

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Q. Right. Based on your observations
at the gross autopsy and based on your knowledge of
the child's anatomical condition as a result of the
catheter procedure and the information available to
you concerning his terminal events, did you formulate
an opinion as to his probable cause of death at that
stage?

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A. Yes, I did. One of my concerns
also Miss Cronk at the autopsy table was that I felt
in addition to the diagnosis that I had listed on
my catheter form on page 69, I was concerned as well
that the sub aortic area was somewhat narrowed, which
is not regularly seen in this type of heart
malformation. Certainly in reviewing the chart and
seeing this youngster had a profound cyanotic episode
before death, before I was informed of the digoxin
levels - excuse me, the postmortem digoxin levels, I
felt that this youngster had a very complex heart
disease, certainly with severe narrowing to the lung
artery and at least on the post mortem table I thought
a compromised sub aortic area. I felt the baby died
as a result of obstruction to both outlets, that is,



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to the aorta and to the lung artery in the setting
of complex cyanotic heart disease.

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Q. We know, Doctor, that a digoxin
level based on a sample drawn on March 22nd at 4:30
a.m. resulted in a digoxin level of 72 nanograms and
another sample drawn as well on March 22nd except
at 6 a.m. resulted in a level of 68 nanograms. I
take it that at some point you became aware of those
levels with respect to Justin Cook?

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A. Correct.

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Q. Do you recall when that was?

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A. I can't remember whether it was
later on Sunday when I called in to see if they had
more catheters to do or Monday, but I know it was
the next - no, I'm sure it was before Monday morning
because I had a meeting with the, I believe it was the
police on Monday morning.

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Q. Having learned of those levels,
Doctor, did they influence or assist you in recon-
sidering the opinion as to the likely cause of death
of Justin Cook which you had formulated following
the gross autopsy?

A. Yes, they did. I had specifically
commented during the catheter study, at least to my
fellow, that if this child started to have problems



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2 We would not want to use digoxin. I felt that would
3 compromise the baby as opposed to ameliorating, you
4 know, the terribly severe heart disease. We talked
5 about the use of inderol, so, when I heard either
6 later on Sunday or early Monday morning the digoxin
7 levels were of this magnitude I thought that is
8 probably what caused this youngster's death.

9 Q Doctor, you have indicated that
10 at the time of performing and carrying out the
11 catheter procedure you felt the digoxin would
12 compromise the condition of Justin Cook?

13 A Right.

14 Q Based on what you were
15 observing during that procedure?

16 A Right.

17 Q Do I take it that that is the
18 same as indicating that in your view it was contra-
19 indicated, would have an adverse effect on the child?

20 A I think - to try and answer that
21 succinctly - yes. I think I can conceive of a
22 situation where one might be pushed into a corner to
23 use digoxin. Some of these children will develop
24 severe dysrhythmias, either during a procedure or after
25 the procedure with heart rates 250, 260. I think in
some of those children we will be put into the



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position of - we would not like to use it, it is the best type of drug to control the dysrhythmia. So, with that type of exception I would have said the digoxin was contraindicated in this baby as the care.

Q Doctor, to your knowledge, or do you have any knowledge as to the conduct of digoxin assays in respect of Justin Cook in the Hospital on tissue samples?

A. No.

Q Okay. Doctor, could I refer you briefly to Exhibit 32B. Mr. Registrar? It is at Tab 45, Dr. Freedom.

A. Yes.

THE COMMISSIONER: No, no, it's all right, you go ahead and I'll see if I can follow it.

MR. PERCIVAL: What is it?

THE COMMISSIONER: It is 32B, it is one of those exhibits.

MS. CRONK: At Tab 45, it is one of Dr. Ellis' digoxin books.

THE WITNESS: Yes.

MS. CRONK: Q The very last page under Tab 45, Doctor, is a handwritten page with a series of handwritten notes on it. Do you have that?

A. Well, I have something that



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starts with Staff Sergeant Press' name on it. Is that what you're referring to?

Q. Yes, that's it.

A. Yes.

Q. Dr. Freedom, as I have indicated, the book that you are looking at, the document under this tab is one of Dr. Ellis' digoxin books from the biochemistry laboratory at the Hospital. Now, on the page to which I have drawn your attention there is a series of notations, the first at the top left-hand side of the page the words "Postmortem Samples" and beside that the name "Dr. Freedom".

A. Yes.

Q. Immediately to the right of that what I take to be V close IVC and it is either to heat or to heart SVC. I have some difficulty in reading that. Under the name Dr. Freedom the words "stat. dig.". Do you see that, Dr. Freedom?

A. Yes.

Q. Right. And on the right-hand side of the page there is a reference to the head and the neck and the indication "kid on dig. at time of death" with an arrow "valve open"?

A. Yes.

Q. And then further down on the page



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there is the notation "hearts", Mr. Barber - 3 baby"
and then "dig. in stomach contents Mr. Snedden - 7 p.m."

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Dr. Freedom, perhaps at the risk of
being obvious, can you help me or do you have any
understanding as to what that notation with reference
to you in postmortem samples in the context of the
other notations in this page means?

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A. Well, I have no idea whatsoever.

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Q. All right. And again, Doctor,
you told me earlier that you had no recollection of
having ordered a postmortem digoxin sample in the case
of Janice Estrella?

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A. Correct.

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Q. Subsequent to her death, do you
have any recollection at any time of requesting that
a digoxin assay be conducted on postmortem samples
on any child who died on the cardiology wards?

17

A. Prior to March of '81?

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Q. Prior to March of '81?

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A. No.

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Q. Well, as Mr. Lamek properly
points out I suppose we should include the 22nd of
March. Prior to the end of March of 1981?

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A. No.

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Q. Okay, thank you, Doctor.

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Doctor, during the course and indeed at the conclusion of Dr. Rowe's evidence in chief, he expressed his view as to the possible explanation of death in a summary fashion with respect to a number of the children about whose deaths we are concerned. I take it that you were not present for the evidence of Dr. Rowe at these hearings?

A. Correct.

Q. Have you had an opportunity and have you reviewed the transcripts of his evidence, however?

A. Yes.

Q. Right. You may recall then, Doctor, that Dr. Rowe indicated, and the reference to that, Mr. Commissioner, if the matter is in issue is at Volume 24, page 4309 and Volume 18, page 3275. He indicated first with respect to the death of Justin Cook that in his view unquestionably the death was caused by digoxin intoxication. He expressed the view that most likely it was an intentional overdose but he didn't know. Is that a view to which you ascribe?

A. Yes.

Q. The next child then mentioned by Dr. Rowe, Dr. Freedom, was Allana Miller. Dr. Rowe



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2 expressed the opinion with respect to her death that
3 the death might have been caused by digoxin
4 intoxication, and the reference in that regard is
5 Volume 18, page 3275 to 3276. Again, Doctor, I ask
6 you is that an opinion with which you agree?

7 A. I have more concerns I think
8 about Allana Miller. I know that she had a high
9 postmortem digoxin level. I certainly felt back in
10 March of 1981, and I indicated so to the police I
11 felt that, you know, Allana Miller had been murdered.
12 I would say that my basic understanding of what
13 happens to digoxin has matured so much in the past
14 two and a half years. If I recall, Allana Miller
15 had blood in her pericardium, blood in her chest
16 cavities which could have conceivably I would think
17 have led to higher postmortem digoxin levels.

18 So, I would have some reservations
19 today, you know, that Allana Miller's death could be
20 explained solely on digoxin.

21 Q Is the possibility of digoxin
22 intoxication a matter that you feel should still be
23 considered with respect to her death?

24 A I would still think yes, it
25 should be under consideration.

Q And the next child referred to



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by Dr. Rowe in this passage of his evidence was Kevin Pacsai. You have told us in evidence that you had no involvement with Kevin Pacsai and you will recall that I asked you to comment upon the indication made by Dr. Fowler that you had been requested to conduct to hold a pathology conference in respect of that death. I take it of Kevin Pacsai you are unable to express an opinion as to the likely cause of his death by virtue of your lack of familiarity with his death?

A. Yes, I would agree.

Q. And similarly does that apply to the death of Kristin Inwood?

A. Yes.

Q. And similarly as I understand it you had no direct involvement in the care and medical management of Jordan Hines during his life at all?

A. Yes, I was in California from the time he was admitted until after his death.

Q. Right. The next child mentioned by Dr. Rowe again in that series, Dr. Freedom, was Janice Estrella?

A. Yes.

Q. And he expressed the opinion with respect to her death once again that her death



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in his view might have been caused by digoxin
intoxication and that's the same reference as with
respect to Allana Miller. Is that a view that you
share, Dr. Freedom?

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A. Again, Miss Cronk, having
reviewed testimony as to how Janice Estrella's
digoxin was drawn post mortem, I would certainly have
concerns as to the validity of those recordings. I
think that would be up to a pharmacologist or a
pharmacokineticist to tell us whether that number
that was generated has any meaning to the situation.

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Q. And by that number, Doctor, are
you referring to the, I believe it was the 72 nanograms?

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A. Correct.

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Q. Thank you. The next child
mentioned by Dr. Rowe, Dr. Freedom, was Antonio
Velasquez and at Volume 18, page 3275 to 3276, Dr. Rowe
expressed the opinion initially that Antonio was as
well a child whose death might have in his view been
caused by digoxin intoxication.

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Q. On a subsequent day of evidence, he indicated his view -- he repeated his view that the child had sustained an idiosyncratic reaction to the drug, Naloxone, and I ask you first, Dr. Freedom, in your view, should the death of Antonio Velasquez be included amongst those children whose deaths, in your opinion, might have been caused by digoxin intoxication?

A. I certainly didn't have that consideration at the time, and as I have tried to suggest, I don't think there is anything necessarily peculiar or particular about a digoxin death in a youngster versus any other type of death.

Q. Well, sitting here today, Doctor, as opposed to the view that you held at the time of the child's death, in your opinion, is the death of Antonio Velasquez a death which might have been caused by digoxin intoxication?

A. I think the way you framed that question I would have to say yes.

Q. Well, do you have some doubt about that, Doctor?

A. I'm sorry?

THE COMMISSIONER: Yes, the answer to that is yes, he does have some doubt. Is that what



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you mean?

THE WITNESS: Yes.

MS. CRONK: Q. Is it a possibility ---

THE COMMISSIONER: It is because you
said might.

THE WITNESS: Yes, that is correct,
Mr. Commissioner.

MS. CRONK: Q. I repeat to you, Dr.
Freedom, that it was in that language that Dr. Rowe
included the child initially on the list and then
repeated his view that the child had suffered an
idiosyncratic reaction?

A. I would agree with that, as well.

Q. On a subsequent day of testimony,
Dr. Rowe referred to the death of Stephanie Lombardo
and indicated that on the basis -- you recall we
discussed this briefly this morning -- on the basis of
the forensic aspects with respect to her death, he
felt her death as well might have been caused by
digoxin intoxication and should be added, if I can
call it that, to the list.

I take it on the basis of your
evidence this morning you had very limited involvement
in that case?

A. Correct.



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Q. Are you in a position, Doctor, to offer us an opinion, your opinion, as to whether or not that child's death might be attributable to digoxin intoxication?

A. I would think in the global concept or construct of this forum, the answer would have to be yes.

THE COMMISSIONER: That's not very helpful, though. I am afraid there is a failure of communication here.

You don't have to answer this question if you don't want to, but do you prefer the theory of digoxin intoxication to that of an anatomical disease?

THE WITNESS: No, I would much prefer, Mr. Commissioner, anatomical disease.

MS. CRONK: Q. With respect to the case of Jesse Belanger, Doctor, you did have more involvement with that child --

A. Right.

Q. -- than you had with Stephanie Lombardo?

A. Right.

Q. Once again, on a day of subsequent evidence, Dr. Rowe testified that, having regard to the forensic aspect of that case, and



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3 having regard to the fact that the child had not been
4 prescribed or, to his knowledge, administered digoxin
5 while in the hospital, that he felt that child's death
6 might have been caused by digoxin intoxication and
7 again I ask you is that an opinion with which you
8 would agree?

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10 A. Well, subsequent to the events of
11 March, 1981, I think we have all read about this
12 digoxin-like material that will show up with digoxin
13 readings as high as 4 and 5.

14 I don't know what the implications of
15 that is in such a youngster as Belanger. This
16 youngster was not prescribed digoxin; either digoxin
17 or a digoxin-like substance was found post mortem
18 in the tissues, so I would presume that would come
19 under the inspection of either the Coroner's Act or
20 this forum.

21 I certainly did not think that Jesse
22 Belanger died of digoxin intoxication at the time of
23 his death.

24 Q. Again, Doctor ---

25 MR. SCOTT: Well, again, Mr. Commissioner, is this getting us anywhere?

As I understood it, Dr. Rowe's evidence
was that if you conclude that Baby Cook was murdered,



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then, he says almost any of the 36 deaths are
theoretically capable of being digoxin deaths.

Now, he went on to list with the
assistance of Mr. Lamek some seven where he thought --
I think it was seven -- where he thought that
possibility should be particularly investigated.

Now, I don't understand anybody's
theory of the case to be anything different than that.
Is it necessary to go through it all?

THE COMMISSIONER: Yes. You see, one
of the problems, Ms. Cronk, about this one is that,
while Dr. Freedom is an expert on the anatomical
condition, particularly those infants that he was
dealing with, he is basing his opinions whether
or not the child might or might not have been poisoned
by digoxin, either accidentally or deliberately, upon
other expert evidence that isn't his own.

MS. CRONK: Well, that ---

THE COMMISSIONER: Just because he
has found out things about digoxin, and I don't really
think it is -- I don't think it is much of a help. It
may appear in the headlines or something like that, but
it is not the sort of thing that I am going to find
conclusive.

MS. CRONK: Well, Mr. Commissioner, I



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leave it there. I would not like to be taken, however, to agree with Mr. Scott's version of what Dr. Rowe's evidence on that issue was necessarily, however.

THE COMMISSIONER: Well, I thought it was pretty close.

MS. CRONK: Well ---

THE COMMISSIONER: He said that they thought the Cook child died by digoxin poisoning ---

MS. CRONK: Well, without arguing the ---

THE COMMISSIONER: And he thought the other six or seven might have.

MS. CRONK: Well, without arguing the matter, Mr. Commissioner, my understanding of the evidence of Dr. Rowe, and this may not be the appropriate time to address the issue, my understanding of his evidence was that subject to the pharmacological evidence as to the interpretation of the levels of digoxin recorded in these children, he felt that Justin Cook's death was unquestionably attributable to digoxin overdose.

He went on to explain what he meant by that, and similarly that some seven other children, discounting Antonio Velasquez, their deaths might have been attributable to digoxin intoxication.

THE COMMISSIONER: The subtlety of



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2 distinction between what Mr. Scott said and now what
3 you say I haven't got yet.

4 MS. CRONK: Well, in terms of Dr.
5 Freedom's ability to assist us this afternoon, and I
6 recognize the time, Mr. Commissioner ---

7 MR. SCOTT: Well -- I'm sorry.

8 MS. CRONK: That is the first time I
9 have seen Mr. Scott's shoulders bowed. I don't know
10 whether I should take some particular note.

11 MR. SCOTT: You can take credit for
12 that.

13 At this stage, when I think we are in
14 the 7th or 8th week of these hearings, is it not
15 reasonably clear that the evidence comes down to this:
16 if there was a murderer in that hospital, it is going
17 to be very difficult because of symptoms or findings
18 to determine how many babies were murdered.

19 Now, as I understand Dr. Rowe's
20 evidence and I think Dr. Freedom's is the same, here
21 is what I say about Justin Cook: if you forensic
22 experts, and that includes your Lordship for these
23 purposes, tell me that that is a murder, then we
24 simply have to go back and look at the others, and
25 Dr. Rowe said of those others there are seven that I
would look at rather carefully.



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2 But to hammer that home incessantly
3 doesn't advance us. We all agree to that.

4 THE COMMISSIONER: No, I agree. I
5 agree with everything you have to say but I would like
6 to put one question just to satisfy Ms. Cronk.

7 You have heard all of the evidence.
8 You have heard what Mr. Scott said was the substance
9 of Dr. Rowe's evidence. Are there any of those
10 children that -- well, I think you have indicated
11 that you would have some doubt perhaps about some
12 of them. But are there any other children that you
13 would add to that list?

14 MS. CRONK: You anticipate me, Mr.
15 Commissioner, as usual.

16 THE COMMISSIONER: Yes.

17 THE WITNESS: No.

18 THE COMMISSIONER: None?

19 THE WITNESS: None.

20 MS. CRONK: Thank you, Dr. Freedom.

21 THE COMMISSIONER: Well, we got a nice,
22 brief answer to that.

23 MS. CRONK: Q. Dr. Freedom, one final
24 and very brief area: based on information provided
25 to Commission Counsel, it has been suggested that at
a meeting on March 23rd, 1981, during the afternoon,



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3 that you attended with Sergeant Anthony Warr of the
4 Metropolitan Toronto Police Force, and you commented
5 to Sergeant Warr at that time that when you learned
6 of the deaths of several of the children on the
7 cardiology wards, you commented -- I'm sorry -- that
8 you commented to Sergeant Warr that you had told a
relative that someone was killing our babies.

9 THE WITNESS: That is true.

10 Q. Fairly, Dr. Freedom, when you
11 are in the witness stand giving evidence, may I ask you,
12 do you recall having made that comment to Sergeant
13 Anthony Warr on the 23rd of March, 1981?

14 A. Yes, I do, and I said that I
15 made the statement on March 21st, late that evening,
16 after I had been told about the Miller digoxin level.

17 Q. And to whom did you make that
statement?

18 A. I believe it was to my brother-
19 in-law or his wife or my wife. I can't recollect. But
20 when I was told about the sky-high level in Allana
21 Miller I was very concerned that there was something
malicious going on.

22 Q. Doctor, what did you mean in
23 making the comment in referring to someone is killing
24 our babies?

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3 A. Just what I said. When I was
4 told that at that time the level had come back on
5 Allana Miller which again I had thought was .9 during
6 the day and sky-high during the night, when I felt
7 that digoxin had been held, number one, number two I
8 had been informed about Pacsai and now Estrella, I had
9 visions of a problem in the hospital that evening.

10 Q. Were you concerned that evening
11 about the deaths of all three children that you have
12 just mentioned, Dr. Freedom, or Allana Miller alone?

13 A. Well, again I had said that it
14 was in the context of Pacsai, Miller and Estrella.

15 MS. CRONK: Thank you, Dr. Freedom, I
16 have no further questions.

17 THE COMMISSIONER: Yes. Thank you.
18 What is the time now?

19 MS. CRONK: Let the record show it is
20 twenty to four.

21 THE COMMISSIONER: Yes, certainly, and
22 let the record also commend you for having completed
23 on time notwithstanding all of my efforts and Mr.
24 Scott's to prevent you.

25 Mr. Scott, you don't want to go now
I take it?

MR. SCOTT: I thought Mr. Percival was.



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3 THE COMMISSIONER: Well, I don't think
4 he wants to go until tomorrow morning.

5 MR. SCOTT: He likes to get in one or
6 two before the journals close for the day.

7 MR. PERCIVAL: I can think of a couple,
8 Mr. Commissioner, but you promised me this morning I
9 wouldn't be going.

10 THE COMMISSIONER: All right.

11 MR. PERCIVAL: I had lunch.

12 THE COMMISSIONER: All right. Well, I
13 give you the option to start tomorrow at ten, but I
14 also give Mr. Scott and Mr. Ortved the opportunity to
15 speak for ten minutes if they want to tonight, and if
16 they don't want to ---

17 MR. ORTVED: That is an invitation I
18 will decline.

19 MR. PERCIVAL: I didn't realize I have
20 a pre-trial at 9:30, but I will get out of that and I
21 will be here as close to 10:00 as I can.

22 THE COMMISSIONER: Well, if you are not
23 here we will just start because either one of them
24 have a right to --

25 MR. PERCIVAL: Oh, sure.

THE COMMISSIONER: -- to bracket you by
coming in afterwards.



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MR. PERCIVAL: Either inside the
Commission or outside.

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MR. SCOTT: Is it Mr. Percival's idea
that he would like for reasons of convenience to go
first at 10:00?

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THE COMMISSIONER: Well, he is worried
that he might not get finished tomorrow, that is the
only problem.

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MR. PERCIVAL: No, no, that is not
right.

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THE COMMISSIONER: Isn't it?

MR. PERCIVAL: No, absolutely not.

THE COMMISSIONER: Then why don't we
just continue? How long do you expect to be, Mr.
Scott?

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MR. SCOTT: I don't know. I haven't
really considered it. I think we will be quite short.

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THE COMMISSIONER: Mr. Ortved?

MR. ORTVED: I agree.

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THE COMMISSIONER: Then I think that it
might be helpful just to take them and then take you
after that so you don't need to worry about your---

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MR. PERCIVAL: Well I wouldn't think
I would be more than an hour and a half.

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MR. SCOTT: What I was going to do,



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3 Mr. Commissioner, and I can't do it tonight, rather
4 than plough through Dr. Rowe's evidence and put all
5 the questions to him (I know that at my request Dr.
6 Freedom has read it) now what I would prefer to do is
7 just simply put some page numbers to him and ask him if
8 he has read that evidence and if he has any comment to
9 make on it.

10 THE COMMISSIONER: I can't tell you how
11 pleased I would be with that kind of question, yes.

12 MR. SCOTT: I am trying to be a very
13 moderate ---

14 MR. PERCIVAL: Will that continue
15 tomorrow, Mr, Scott?

16 THE COMMISSIONER: In the case of an
17 expert who clearly acknowledges he has read it, and if
18 you say you have read what Dr. Rowe said, do you agree,
19 do you disagree, do you have any comments, would speed
20 things up I would think considerably.

21 MR. SCOTT: However, I can't do that
22 tonight because I haven't got the page numbers.

23 THE COMMISSIONER: If you can't do it
24 tonight do you want to do it on Monday, is that it?

25 MR. SCOTT: No, I thought I would do it
tomorrow.

THE COMMISSIONER: Oh no, I thought you



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2 meant you couldn't prepare yourself tonight.

3 MR. SCOTT: No, no.

4 THE COMMISSIONER: Oh well if you can
5 do it tomorrow that is fine. Do it tomorrow and we
6 will take you and Mr. Ortved in whatever order you
7 prefer and then we will take Mr. Percival after that
8 and then we will take anyone else we can up until
9 4:00 o'clock, 4:30 I guess tomorrow night.

10 All right. We will continue in any
11 event.

12 I'm sorry, but you are going to be back
13 here on Monday. There is no way that we can avoid that
14 because of the Jewish Holiday.

15 THE WITNESS: Okay. So it will be
16 tomorrow then and ---

17 THE COMMISSIONER: Monday. All right.
18 10:00 o'clock tomorrow morning.

19 --- Whereupon the hearing adjourned until Thursday,
20 September 8th, 1983.

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